



CATHOLIC EDUCATION WESTERN AUSTRALIA

Contract Title

CONTRACT NO: **Insert Contract Number**

**GENERAL TERMS AND CONDITIONS OF
CONTRACT
CONSULTANCY SERVICES**

INSERT CONSULTANT NAME

ACN/ABN:

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FORMAL INSTRUMENT OF AGREEMENT

THIS CONTRACT is made on the.....day of.....**2022**

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

BACKGROUND:

CEWA requires that certain services relating to the provision of **insert the Services to be provided**, being the Services as defined in the Contract should be performed and has accepted an offer by the Consultant for the provision of those Services.

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 Conditions of Contract.
- 2) The following documents comprise this Contract, namely:
 - (a) the Formal Instrument of Agreement;
 - (b) the General Terms and Conditions of Contract; and
 - (c) the Annexure to the General Terms and Conditions of Contract.
- 3) In consideration of the payment by CEWA to the Consultant of the Consultant's Fee at the times and in the manner prescribed in the Contract, the Consultant covenants with CEWA to provide the Services in conformity in all respects with the provisions of the Contract.
- 4) In consideration of the provision of the Services by the Consultant, CEWA covenants with the Consultant to pay to the Consultant the Consultant's Fee 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 Consultant to be inserted, examples as follows:

Where the Consultant is signing under an Authorised Representative

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

Authorised Representative Date

Name of Authorised Representative

Position (please print)

Where the Consultant is signing under a Common Seal

THE COMMON SEAL of **INSERT CONSULTANT 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 Consultant is a Company with two Directors

EXECUTED by **INSERT CONSULTANT**
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 Consultant is a Company one person appointed as sole Director and sole company Secretary

EXECUTED by **INSERT CONSULTANT**
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 Consultant 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 OF CONTRACT

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 7 to the Annexure.

Annexure means the Annexure to these General Terms and Conditions of Contract.

Approvals means certificates, licenses, consents, permits, approvals, and requirements made or authorised by a Commonwealth, State, Territory, or local government or by a Legislative Requirement.

Australian Standards means the Australian Standards 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 Consultant.

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 Conditions of Contract and any other annexures, schedules, addendum, or other documents attached thereto or provided by CEWA to the Consultant in relation to the Contract including but not limited to:

- (a) Contract Details;
- (b) Consultant's Fee Schedule;
- (c) General Terms and Conditions of Contract; and
- (d) any Purchase Orders issued pursuant to this Contract.

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

Consultant's Fee means the amount payable by CEWA to the Consultant for the provision of the Services under this Contract as calculated pursuant to the rate or rates set out in Schedule 2 to the Annexure in accordance with clause 24.

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

Consultant's Brief means Schedule 3 to the Annexure.

Consultant's Representative means the representative of the Consultant 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 Consultant relating to CEWA for the purposes of providing the Services 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 Consultant 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, Consultant systems or tools

Deliverables means those Documents and things required to be handed over to CEWA by the Consultant in accordance with this Contract.

Defective Services means any Services that do not comply with the Contract or are otherwise defective in any manner.

Direction means any agreement, approval, assessment, authorisation, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by CEWA.

Documents means information stored by electronic or other means.

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:

- (a) 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);
- (b) 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;
- (c) 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;
- (d) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, insurrection, revolution, epidemic, pandemic or quarantine;
- (e) an industry-wide, State-wide or Australia strike, lock-out, ban or other industrial disturbance; or

- (f) 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.

GST means the goods or services tax levied or imposed in Australia pursuant to the *New Tax System (Services 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.

Key Personnel means Personnel of the Consultant described in Schedule 4 to the Annexure

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

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) *Copyright Act 1968* (Cth);
- (d) *Privacy Act 1988* (Cth);
- (e) *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 Commitments means Schedule 7 to the Annexure.

Moral Right means the rights defined as 'Moral Rights' in the *Copyright Act 1968* (Cth).

Occupational Health and Safety Requirements means Schedule 6 to the Annexure.

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

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

Personnel means the directors, officers, employees, consultants, specialist sub-consultants, sub-contractors, suppliers, and agents of the Consultant 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 otherwise notified by CEWA to the Consultant from time to time.

Police Clearance means a National Police Clearance, as issued by the appropriate authority.

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 Consultant requiring the provision of the Services in accordance with this Contract.

Regional and Aboriginal Business Commitments means Schedule 8 to the Annexure.

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.

Services means the Services described in the Contract Details and associated Schedules to the Contract including the supply of the Deliverables to be provided by the Consultant in accordance with the terms of the Contract, or where the context permits, as described in the Purchase Order.

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)

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 provision or non-provision of the Services by the Consultant.

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 Consultant 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 Consultant 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 CONSULTANT'S OBLIGATIONS

- 4.1 Without limiting its obligations elsewhere in the Contract, the Consultant warrants that:
- (a) it is able and qualified and has access to all necessary resources to provide the Services in accordance with the requirements of this Contract;
 - (b) the Services shall be performed to the standard of care, skill and diligence that would normally be expected of a skilled, reputable and competent professional or organisation providing similar services to the Services;
 - (c) it and its Personnel are skilled, trained, qualified and competent to perform the Services in accordance with Good Industry Practices in a competent, skilled and efficient manner;
 - (d) it shall commence the Services on the Commencement Date, dedicate sufficient time and attention to the proper performance of the Services;

- (e) it shall obtain all applicable permits, licenses, exemptions, consents and approvals required for the Consultant to perform the Services;
- (f) it shall give all notices, and pay all entitlements, fees and taxes in connection with the Services and its Personnel (including leave entitlements and income, fringe benefits, payroll and withholding taxes) unless otherwise specified in accordance with this Contract;
- (g) all Services provided under this Contract will strictly comply with any description or specifications notified by CEWA to the Consultant, applicable Australian Standards and all applicable Laws;
- (h) the Services will not infringe the Intellectual Property Rights of any person;
- (i) it has examined the Consultant's Brief and agrees to exercise reasonable care in accordance with Good Industry Practice to ensure that the Services:
 - (i) will be fit for the purposes which CEWA has communicated to the Consultant;
 - (ii) are free from defects in design and that the Consultant has notified CEWA in writing of any ambiguity, error, omission, discrepancy or inconsistency in the Consultant's Brief which would prevent the Services from being suitable, appropriate and adequate for the purposes which CEWA has communicated to the Consultant;
- (j) all information about the Services provided by the Consultant to CEWA is true and correct in all respects, and no material information regarding the Services has been withheld from CEWA; and
- (k) there are no terms, conditions, or restrictions (such as patent conditions) which will become binding on CEWA because of the provision of the Services by the Consultant, other than as disclosed in writing to CEWA by the Consultant prior to execution of this Contract.

4.2 If following commencement of work on the Deliverables, the Consultant becomes aware that any of the information provided to the Consultant by CEWA contains an ambiguity, error, omission, discrepancy or inconsistency, the Consultant must promptly give notice to the CEWA Representative of the ambiguity, error, omission, discrepancy or inconsistency and the Consultant's proposed solution and at the very latest within 2 Business Days of becoming aware.

4.3 On receipt of a notice from the Consultant under clause 4.2, CEWA will review the information and provide a Direction in writing to the Consultant. If the Direction provided to the Consultant by CEWA requires a Variation to the Contract, at the discretion of CEWA, the CEWA Representative will issue a notice of variation in accordance with clause 28.

4.4 The Consultant 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.

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

4.6 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 & SECURITY

5.1 The Consultant 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 the Occupational Health and Safety Requirements detailed in Schedule 6 to the Annexure.

- 5.2 The Consultant 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 regarding 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 purchase the Services from the Consultant, nor does this Contract confer upon the Consultant any exclusivity in respect of the provision of the Services to CEWA. CEWA, at its discretion, may engage other Consultants to provide the Services to CEWA, including Services of the same type or nature as the Services under this Contract.

7 PERIOD OF CONTRACT

- 7.1 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.
- 7.2 CEWA may extend the Contract for the extended term or terms specified in the Contract Details by giving notice to the Consultant at any time during the Term, or any extension of the Term.

8 ACCEPTANCE BY PERFORMANCE

- 8.1 In the absence of formal written acceptance of the terms of the Contract by the Consultant, the commencement of any part of the Contract by the Consultant, including but not limited to the provision of the Services, will be deemed to be an acceptance by the Consultant of the terms and conditions of the Contract.

9 NATIONALLY COORDINATED CRIMINAL HISTORY CHECK

- 9.1 The Consultant's Personnel engaged in the provision of the Services to CEWA that will be attending the Site shall obtain at the Consultant's Cost a Nationally Coordinated Criminal History Check (NCCHC) coordinated by the Department of Education.
- 9.2 If the NCCHC details that any of the Consultant'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 Consultant promptly remove that person from the provision of the Services at the Consultant's cost.
- 9.3 The replacement of Consultant's Personnel under clause 9.2 shall be subject to the approval of CEWA acting reasonably.

10 WORKING WITH CHILDREN

- 10.1 If the provision of the Services under the Contract involves "child related work" as defined in section 6 of the Working with Children Act, then:
- (a) The Consultant 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 provision of the Services under the Contract;
 - (ii) the Consultant shall otherwise always comply, and ensure that all Consultant Personnel comply with the Working with Children Act; and
- (b) a breach of this clause 10.1 shall be deemed a material breach of the Contract which cannot be remedied.

11 PRECEDENCE OF DOCUMENTS

- 11.1 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.

12 DISCLOSURE OF CONTRACT INFORMATION AND DOCUMENTS

- 12.1 Documents and other information relevant to the Contract may be disclosed when required by Law, tabling of documents in Parliament or under a Court Order.

13 COMPLIANCE WITH LAWS AND PROCEDURES

- 13.1 The Consultant 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), Legislative Requirements, Approvals, 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 Services.

14 REPRESENTATIVES

- 14.1 CEWA's Representative:
- (a) The Consultant shall only deal with the CEWA Representative nominated in the Contract Details.
 - (b) CEWA may replace the CEWA Representative by notice to the Consultant. 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 Consultant from time to time.
 - (c) CEWA may by notice to the Consultant 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 Consultant.
- 14.2 Consultant's Representative:
- (a) The Consultant may replace the Consultant's Representative by giving 7 days' notice of the request to the CEWA Representative.
 - (b) The Consultant's Representative may appoint delegates and change the delegate of the Consultant's Representative by giving 7 days' notice to the CEWA Representative.

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

15 PROVISION OF SERVICES BY PURCHASE ORDER

- 15.1 CEWA may order the Services from time to time in accordance with, and subject to, the terms and conditions contained in this Contract.
- 15.2 Where the Contract provides that Services must only be provided upon receipt of a Purchase Order, CEWA will send to the Consultant a Purchase Order electronically or by such other means as reasonably determined by CEWA. The Consultant must fulfil all Purchase Orders for Services placed by CEWA during the Term of the Contract.
- 15.3 The Purchase Order will include the description and quantity of the Services ordered, the Delivery Date of the Services 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 Consultant separately in writing of the required information which will be deemed to form part of the Purchase Order.
- 15.4 Notwithstanding any other provision of this clause 15, it is the responsibility of the Consultant to ensure that it obtains all necessary information from CEWA to ensure that the Consultant fulfils the provision of the Services.
- 15.5 The Consultant shall confirm receipt of the Purchase Order to CEWA within 1 Business Day.

16 PERFORMANCE OF SERVICES

- 16.1 The Consultant shall carry out the Services in a conscientious, expeditious and professional manner.
- 16.2 The Consultant warrants that its Personnel, employees, and agents are competent and have all necessary skills, training, and qualifications to carry out the provision of the Services in accordance with these conditions.

17 QUALITY OF SERVICES

- 17.1 All Services provided must conform to the Consultant's Brief specified in the Contract Details.
- 17.2 Where no standards are specified in the Contract, the Services 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 DELAY IN DELIVERY

- 18.1 The Consultant acknowledges it is a fundamental obligation of the Consultant to keep CEWA fully informed of both possible and actual delays 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 Deliverables; and
- (c) monitor and investigate, at the earliest possible point in time:
 - (i) the causes and effects of possible and actual delays;
 - (ii) the Consultant's mitigation of possible and actual delays including whether the Consultant 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 Consultant is or will actually be delayed in delivery of the Deliverables under the Services.

It shall be a condition precedent to the Consultant's entitlement to any extension of time that the Consultant has strictly complied with all of the requirements of this clause 18 and clause 29.

- 18.2 Upon it becoming evident to the Consultant that delivery of the Deliverables under the Services is likely to be delayed, the Consultant shall promptly notify CEWA in writing. Notification of delay will not release the Consultant from any other obligation under the Contract, unless CEWA otherwise agrees in writing.
- 18.3 The Consultant shall, following consultation with CEWA, and without limiting CEWA's rights under this Contract, take such steps as directed by CEWA to minimise the delay in the delivery of the Deliverables.
- 18.4 The Consultant shall be responsible for all damages, costs and expenses arising from any delay in the delivery of the Deliverables under the Services, except to the extent that CEWA or its Personnel has contributed to the delay.
- 18.5 The Consultant is only entitled to such extensions of time for compliance with the Contract as CEWA, upon the written application of the Consultant, in its absolute discretion grants in writing.

19 DELIVERABLES AND WORK

- 19.1 The Consultant 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 and consistent with Good Industry Practice.
- 19.2 Except to the extent legally or physically impossible, the Consultant must execute the provision of the Services in strict conformity with the Contract and CEWA's Direction on any matter touching or concerning the provision of the Services or the property or employees of CEWA.
- 19.3 The ownership of Deliverables that are provided by the Consultant as part of the Services passes to CEWA upon payment by CEWA for the Deliverable.
- 19.4 If CEWA is of the opinion that any aspect of the Services fails to comply with the Contract, CEWA may direct that the Consultant corrects the Services or Deliverables at the Consultant's own expense.

20 DEFECTIVE SERVICES

- 20.1 If CEWA, acting reasonably, finds that any of the Services are Defective Services, then, without limiting any other remedy available to CEWA, CEWA may by written notice to the Consultant require the Consultant re-perform the Defective Services at no cost to CEWA.
- 20.2 If the Consultant receives a notice under clause 20.1 and does not re-perform the Defective Services within a reasonable time, then CEWA may procure substitute services from another supplier.
- 20.3 All costs incurred by CEWA in procuring substitute services must be paid by the Consultant within five days following written demand by CEWA.

21 KEY PERSONNEL

- 21.1 CEWA and the Consultant may agree on the names and roles of the Key Personnel who will perform all or some of the Services under the Contract and the Consultant shall not replace any such Key Personnel without the prior written agreement of CEWA.
- 21.2 CEWA may give notice requiring the Consultant to remove specified Personnel from performing all or some of the Services under the Contract. The Consultant shall promptly arrange for the removal of such Personnel from the Site and their replacement with a person acceptable to CEWA at the Consultant's sole cost.

22 DEFAULT OF CONSULTANT

- 22.1 If the Consultant 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 Consultant within five days following written demand by CEWA.

23 WARRANTY

- 23.1 The Consultant must obtain all warranties specified in the Contract including any warranties that are obtained by any specialist sub-consultant or sub-contractor and must ensure that CEWA will have the benefit of those warranties.

24 PAYMENTS

- 24.1 The Consultant's Fee is inclusive of all costs and expenses in relation to the provision of the Services and Deliverables whatsoever, including but not limited to all taxes, duties, imposts, levies, and other government charges (other than GST).
- 24.2 The Consultant is only entitled to payment for reimbursable expenses and disbursements as set out under the Consultant's Fee, and any other expense or disbursement if approved in writing by CEWA prior to the disbursement being occurred.
- 24.3 With the exception of GST, which this Contract expressly provides is to be paid by CEWA, the Consultant 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 provision of the Services under the Contract or any payment made by CEWA to the Consultant in respect of the provision of the Services.

- 24.4 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 Consultant will be entitled to submit to the CEWA Representative an invoice for those Services provided 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 Consultant agrees with CEWA that the times or stages for payment claims stated in this clause 24.4 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'.
- 24.5 The invoice shall not exceed the amount specified in a Purchase Order or this Contract unless first approved by CEWA in writing.
- 24.6 Invoices must be submitted by the Consultant to CEWA by email at **insert email address** (or such other email address as notified by CEWA to the Consultant).
- 24.7 Each invoice must be in a form acceptable to CEWA and shall contain the following information:
- (a) in respect of the Services:
 - (i) the Purchase Order number;
 - (ii) the Contract number;
 - (iii) the Variation number (if any);
 - (iv) the identity and ABN of the Consultant;
 - (v) a description of the Services that were provided;
 - (vi) the quantity of the Services provided;
 - (vii) the amount of the Consultant's Fee claimed, and how that amount was determined
 - (viii) any further information as required by Law; and
 - (ix) any such other information as reasonably requested by CEWA from time to time;
 - (b) in respect of any reimbursable expense or disbursement:
 - (i) a description of the expense or disbursement being claimed;
 - (ii) the amount of the expense or disbursement being claimed; and
 - (iii) accompanied by relevant invoices and receipts for payment to substantiate the reimbursable expense or disbursement.
- 24.8 If CEWA requests further information or evidence under subclause 24.7(ix), 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.
- 24.9 Subject to clause 26, CEWA must, within 30 days of receipt by the CEWA Representative of a claim for payment under clause 24.4, make payment to the Consultant equal to the undisputed value of the Services as determined by the CEWA Representative in accordance with the Consultant's Fee Schedule.
- 24.10 Payment by CEWA is on account and is not evidence of the value of work completed, an admission of liability nor evidence that the Services have been executed satisfactorily.

- 24.11 CEWA may deduct from monies due to the Consultant under clause 24.1, any monies due from the Consultant to CEWA under the Contract.
- 24.12 CEWA will make payment to the Consultant by electronic funds transfer (EFT) to the Consultant's nominated bank account in Australia. CEWA will not split invoice payments across multiple bank accounts.
- 24.13 The Consultant 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 Consultant's official company letterhead and signed by the Consultant's Representative.

25 GOODS AND SERVICES TAX

- 25.1 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.
- 25.2 The Consultant's Fee shall be inclusive of all applicable GST at the rate in force for the time being.

26 DISPUTED INVOICES

- 26.1 Where CEWA disputes the accuracy of an invoice, it must, subject to clause 26.2, pay the Consultant the undisputed amount of that invoice (if any) not in dispute in accordance with clause 24.9 and may withhold payment of the amount in dispute until such time as the dispute is resolved.
- 26.2 Where CEWA withholds the payment of an invoice in accordance with this clause 26, then the Consultant 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 Consultant in accordance with this clause 26.
- 26.3 Where CEWA withholds payment (in whole or part) of an invoice in accordance with this clause 26, then within 14 days of receipt by the CEWA Representative of a claim for payment under clause 24.4 it must notify the Consultant of via a written schedule (**Payment Schedule**):
- (a) the amount that is undisputed;
 - (b) the amount it has withheld; and
 - (c) why payment of that amount is disputed.
- 26.4 Insofar as is necessary to ensure compliance with the SOP Legislation, each such Payment Schedule shall constitute a payment schedule for the purposes of the SOP Legislation.
- 26.5 The Consultant 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 Consultant is entitled to in respect of the Contract.
- 26.6 Without limiting CEWA's rights under any provision in the Contract, CEWA may set off as against any monies due to the Consultant any debt or claim (contingent or otherwise) due by the Consultant to CEWA under the Contract.

27 RISE AND FALL IN COSTS

- 27.1 Unless otherwise stated in the Contract Details, all the rates and prices specified in the Consultant's Fee Schedule that are used to calculate the Consultant's Fee 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.
- 27.2 If a rate review is specified in the Contract Details, the rates payable for the Services as specified in the Consultant's Fee Schedule will be subject to adjustment using the formula, and at the times specified in the Contract Details.

28 VARIATIONS

- 28.1 The CEWA Representative may direct any variation to the scope, timing, form, quality, or quantity of the provision of Services which in the CEWA Representative's opinion is necessary and the value of the variation will be considered in determining the final Consultant's Fee.
- 28.2 Variations to which clause 28.1 apply must be valued at the applicable rates or prices referred to in the Consultant's Fee Schedule. If the Consultant's Fee 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 Consultant, failing which the rates or prices will be determined solely by the CEWA Representative.
- 28.3 A variation of the Contract must be in writing and signed by CEWA.
- 28.4 If the Consultant considers a Direction of CEWA given in accordance with this Contract requires a Variation, but CEWA has not issued the Direction as a Variation to the Contract, the Consultant must promptly notify CEWA in writing detailing why the Consultant considers the Direction requires a variation to the Contract.
- 28.5 If CEWA, by written notice, disagrees with the opinion of the Consultant given in accordance with clause 28.4, the Consultant shall comply with the Direction of CEWA but may, within 20 Business Days, dispute the notice issued by CEWA by giving notice under clause 48.
- 28.6 No variation to the provision of Services will vitiate the Contract and no variation may be made by the Consultant without a written CEWA direction issued pursuant to this clause 28.

29 EXTENSION OF TIME

- 29.1 Subject to clause 29.3, the Consultant shall complete the Services by the Expiry Date stated in the Contract Details.
- 29.2 Where a delay event occurs, the Consultant shall, as soon as reasonably practicable, take all reasonable steps to overcome or mitigate any effects of the delay to minimise the impact on the delivery of the Services.
- 29.3 CEWA must grant the Consultant a reasonable extension of time for any delay to the completion of the Services by the Consultant caused by:
- (a) an act or omission of CEWA or its officers, employees, agents or other consultants or contractors (including a Variation directed by CEWA that impacts the Consultants ability to deliver the Services);

- (b) an event of Force Majeure; or
- (c) any event or circumstance for which a provision of this Contract provides that the Consultant may be entitled to an extension of time,

provided that the Consultant notifies CEWA of the delay and its cause pursuant to clause 18 and this clause 29 within 7 days of the Consultant becoming aware of the delay or its cause and provides reasonable evidence of the cause and duration of the delay.

- 29.4 Within 14 days of receiving the Consultant's request for an extension of time, the CEWA Representative will assess the request and make a determination as to whether the request is approved or rejected.
- 29.5 If the Consultant's request is rejected, the Consultant may be required to provide such additional information as determined by the CEWA Representative.
- 29.6 If the Consultant's request is approved, the CEWA Representative will adjust the Expiry Date to reflect the delay caused to the Consultant by the event. Such adjustment will be no greater than required to reflect the delay to the Consultant caused by the event.
- 29.7 The Consultant shall have no entitlement to an extension of time for any period in which a delay is caused, or contributed to, by the act or omission of the Consultant or its officers, employees, agents, specialist sub-consultants or sub-contractors.

30 PERFORMANCE REVIEW

- 30.1 The Consultant shall meet the Key Performance Indicators (**KPIs**) specified in the Contract Details (if any).
- 30.2 CEWA and the Consultant 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 Consultant, to discuss the Consultant'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.
- 30.3 Within two weeks following each meeting that takes place under clause 30.2, or if the Consultant fails to attend a meeting notified by CEWA under clause 30.2 then within two weeks of the notification by CEWA under clause 30.2, CEWA will assess the Consultant's performance of the Service against the KPI's and will, in respect of each KPI, rate the performance of the Consultant.
- 30.4 If, at any time during the Term the Consultant's performance against the KPI's is below the expectation of CEWA, the Consultant must remedy that failure for that KPI within the time specified in writing to the Consultant by CEWA, acting reasonably.
- 30.5 If, at any time during the Contract Term the Consultant:
 - (a) fails to comply with clause 30.4; 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 Consultant.

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

31 APPROVALS

- 31.1 The Consultant, as a minimum, must obtain the Approvals as detailed in the Contract Details and except as specifically outlined in the Contract, shall obtain all necessary Approvals required for the discharge of its obligations under this Contract, including the provision of the Services.

32 INFORMATION

- 32.1 The Consultant shall provide CEWA with whatever information CEWA might reasonably request from the Consultant in relation to the Services within such reasonable time as specified by CEWA.
- 32.2 The Consultant 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 Consultant by or on behalf of CEWA:
- (a) is provided for the convenience of the Consultant only and it is the responsibility of the Consultant 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.

33 MEETINGS

- 33.1 The Consultant must consult regularly with CEWA and will attend meetings and briefings as reasonably required by CEWA to discuss the progress and status of the provision of the Services at such times and at such places as reasonably directed by CEWA from time to time.

34 REVIEW AND ACCEPTANCE

- 34.1 The Consultant must allow CEWA to review and discuss the Documents and Deliverables (regardless of completion or stage of progress) produced by the Consultant in performing the Services.
- 34.2 The Consultant shall remain responsible for the delivery of the Services despite any review or acceptance of any of the Services by CEWA.

35 COOPERATION WITH OTHERS

- 35.1 The Consultant shall use reasonable endeavours to liaise, cooperate and consult with contractors and other consultants of CEWA required to coordinate the delivery of the Services by the Consultant with the services of those contractors and consultants to produce the Deliverables.

36 RECORD KEEPING

- 36.1 The Consultant shall maintain complete and keep accurate records to substantiate the accuracy of all claims, reports, invoices, documents, and plans prepared or issued in relation to the Services 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.

37 CONFIDENTIALITY

- 37.1 The nature of this Contract is such that the Consultant 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 during the Term as Confidential Information.
- 37.2 The Consultant 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.
- 37.3 A breach of confidentiality is a material breach of the Contract and shall be grounds for termination of the Contract.
- 37.4 This Clause 37 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).
- 37.5 If the Consultant must disclose CEWA's Confidential Information under clause 37.4, 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.

38 PUBLIC DISCLOSURE FOR PROMOTIONAL PURPOSES

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

39 CONFLICT OF INTEREST

- 39.1 The Consultant 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 Consultant undertakes to notify CEWA immediately in writing of that conflict or risk.

- 39.2 The Consultant must monitor and, unless CEWA has given prior written consent to the conflict of interest, avoid the occurrence of any conflict of interest.
- 39.3 The Consultant must notify CEWA immediately on becoming aware of a conflict of interest or the significant risk of a conflict.
- 39.4 The existence of, or failure to declare such conflict of interest will entitle CEWA to terminate the Contract.

40 PRIVACY

- 40.1 The Consultant:
- (a) shall comply with the Australian Privacy Principles and all other Privacy Laws with respect to the supply of the Goods and Services under this Contract to the same extent as CEWA would have been bound had the supply of the Services had been completed by CEWA;
 - (b) without limiting clause 40.1(a), shall, and ensure the Consultant 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.
- 40.2 Without limiting its obligations under this clause 40, if the Consultant collects or has access to Personnel Information in connection with the provision of the Services under this Contract, the Consultant:
- (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 Consultant Personnel who need to know that information for the purposes of providing the Services (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.
- 40.3 If the Consultant becomes aware that the Consultant or the Consultant'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 Consultant 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.

41 DATA PROTECTION

- 41.1 The Consultant shall not (and shall ensure that the Consultant Personnel do not):
- (a) use Data held by the Consultant, or to which the Consultant has access in connection with the provision of the Services 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 Services under the Contract.

- 41.2 The Consultant 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.
- 41.3 The Consultant 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 Consultant.
- 41.4 Without limiting the generality of clause 41.3, the Consultant 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.
- 41.5 The Consultant 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.
- 41.6 Where requested by CEWA, the Consultant shall promptly provide CEWA with:
- (a) access to the Data in the possession or control of the Consultant 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.
- 41.7 In providing the Services under the Contract, the Consultant shall not store or process any Data or other Personal Information collected by the Consultant in connection with the provision of the Services in any country outside of Australia without CEWA's prior written consent.

42 DATA INCIDENTS

- 42.1 In the event of any loss or corruption of, or damage to, any Data, the Consultant 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 Consultant).

- 42.2 The Consultant must take such steps as are necessary to ensure that it can comply with clause 42.1 in the event of a Data Incident.
- 42.3 To the extent that the Consultant is unable to restore any lost, corrupt, or damaged Data in accordance with clause 42.1, CEWA may recover from the Consultant any costs and expenses that CEWA reasonably incurs in taking its own action (including engaging third parties) to restore that Data.

43 INTELLECTUAL PROPERTY RIGHTS

- 43.1 Unless the Parties provide otherwise in writing, the title, copyright, ownership and all other rights to any Intellectual Property created in the provision of the Services 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 Consultant) shall vest with CEWA free of all encumbrances and third-party rights.
- 43.2 The Consultant 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 use, adapt, reproduce, amend, publish, and sublicense on the same terms, the Deliverables created by the Consultant for any purpose for which the Services are provided, including any subsequent repairs, maintenance, or servicing.
- 43.3 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 Consultant 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 Services by or on behalf of CEWA.
- 43.4 The Consultant shall, at its own cost, do all things necessary to grant the assignment under clause 40.1, including executing any required documents or effecting any required registrations.
- 43.5 The Consultant warrants that:
- (a) the Consultant has the right to grant the licences granted by it; and
 - (b) the Services which it supplies to CEWA pursuant to the Contract will not infringe the intellectual property rights of a third party.
- 43.6 The Consultant 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 Services provided by the Consultant, or the Intellectual Property made available by the Consultant to CEWA, infringing the Intellectual Property of any third person.
- 43.7 The Consultant 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 Consultant fails to do so in accordance with their obligations.

44 MORAL RIGHTS

- 44.1 The Consultant has or shall obtain a consent from each of the Contractor's Personnel and use its best endeavours to obtain a consent from its agents, specialist sub-consultants, and sub-contractors (and their respective employees) in connection with the Services which complies with the *Copyright Act 1968* (Cth) and in a form acceptable to CEWA.
- 44.2 In relation to the Services:
- (a) The Consultant must be attributed as the author of the physical product of the Services in the form as described in the Contract Details, when CEWA considers it reasonable and practicable, or as otherwise agreed in writing between the Parties;
 - (b) CEWA does not need to advise the Consultant of any actual or intended alteration to or demolition of any project, building or structure related to the Services unless otherwise agreed in writing between the Parties;
 - (c) The Consultant has the right to give consent on behalf of its employees and its specialist sub-consultants and sub-contractors (if any); and
 - (d) Where requested, the Consultant must provide CEWA with a copy of all relevant consents in a form acceptable to CEWA, within a reasonable time as directed by the CEWA Representative.

45 SUB-CONTRACTING

- 45.1 The Consultant 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.
- 45.2 Any approval to engage a specialist sub-consultant or sub-contractor to provide any part of the Services required under this Contract shall not relieve the Consultant from any of its liabilities or obligations under this Contract. The Consultant shall be responsible for the work of the specialist sub-consultant, sub-contractor or any employee or agent of the specialist sub-consultant or sub-contractor and guarantee that services provided by the specialist sub-consultant or sub-contractor as if the Consultant had performed these Services itself under the Contract and being free from deficiencies in design, performance, and workmanship.

46 AWARDS AND WORKPLACE AGREEMENTS

- 46.1 The Consultant must observe, perform, and comply in all material respects with all relevant industrial awards, agreements, instruments and orders applicable to the provision of the Services.
- 46.2 The Consultant 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.
- 46.3 Failure by the Consultant 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 Consultant.

47 MODERN SLAVERY

- 47.1 In performing its obligations under this Contract, the Consultant shall and shall ensure all its agents, specialist sub-consultants, sub-contractors, 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 Consultant will treat all its workers with dignity and respect and will not apply any form of deception, threat, coercion or violence;
 - (ii) requires the Consultant to identify, assess and address the risk of Modern Slavery in its supply chains;
 - (iii) requires the Consultant 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 Consultants, specialist sub-consultants, sub-contractors, and suppliers to ensure that any risks of Modern Slavery in the Consultants 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, specialist sub-consultants or sub-contractors 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 specialist sub-consultants and sub-contractors systems, processes and actions to identify, assess and address these risks;
 - (c) implementing a training program, including retaining records of training, for the Consultant'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 Consultant'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 44.1(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 44.1(a) to (f).

47.2 The Consultant must

- (a) notify CEWA as soon as the Consultant 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 Consultant has complied with this clause 44 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 Consultant 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 Consultant'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 Consultant's supply chains.

47.3 Despite any other provision of this Contract if the Consultant refuses or fails to:

- (a) meet any of its obligations under this clause 44;
- (b) comply with clause 44.1(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 52.

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

47.5 The Consultant 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.

48 REGIONAL AND ABORIGINAL ENGAGEMENT COMMITMENTS

- 48.1 The Consultant warrants that it will meet in full the commitments detailed in Schedule 8 to the Annexure for Regional and Aboriginal Engagement.
- 48.2 At any time during the Contract, the Consultant may be required to provide to the CEWA Representative information confirming compliance with the regional and aboriginal engagement commitments.
- 48.3 If the information given by the Consultant under this clause indicates that full compliance with the regional and aboriginal engagement commitments may not be achieved, the Consultant must submit to the CEWA Representative for approval, details of how it proposes compliance will be achieved.
- 48.4 Failure of the Consultant 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 52.

49 INSURANCES

- 49.1 The Consultant 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) **Public Liability:** Covering all legal liability for loss, damage, or injury to person (including death) or property caused by the Consultant 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.
- (b) **Professional Indemnity:** Covering all legal liability to claims for financial losses arising from any act, error, or omission in the conduct of the Consultant 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.
- (c) **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 provision of the Services (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.
- (d) **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 Consultant or its Personnel in connection with the provision of the Services to a minimum value of \$20,000,000.

Delete as required for the Services under Contract

- 49.2 To the maximum extent practicable, the Consultant's public 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.

- 49.3 The Consultant 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 Consultant's insurance policy during the Term of the Contract or on request by CEWA.
- 49.4 If the Consultant 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 Consultant; and
 - (b) suspend payment of any monies due under this Contract until the Consultant fulfils its obligations.

50 LIABILITY AND INDEMNITY

- 50.1 Liability whether in contract or tort (including negligence), which arises under or in connection with this Contract will be limited to an amount of \$10,000,000. This limitation will not apply to liability for:
- (a) personal injury, including sickness and death;
 - (b) fraudulent, malicious or criminal conduct;
 - (c) wilful default;
 - (d) loss of, or damage to, tangible property; and
 - (e) infringement of Intellectual Property Rights.
- 50.2 The Consultant indemnifies and releases CEWA, from and against any Claims for loss or damage or expense suffered or incurred by the Consultant (whether direct, indirect, economic, consequential, or otherwise) resulting from or in connection with:
- (a) any loss or damage to any property;
 - (b) personal injury to, or disease, illness (including mental illness) or death of, any person;
 - (c) Claims by third parties against CEWA in connection with the provision of the Services;
 - (d) any infringement of CEWA's Intellectual Property Rights;
 - (e) any written representations made by the Consultant 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 Consultant;
 - (g) the Consultant's breach of applicable Laws or the Consultant's negligent act or omission in connection with this Contract; and
 - (h) the Consultant's wilful act or omission.

Arising out of or in connection with:

- (a) the discharge of the Consultant's obligations under this Contract in the provision of the Services; or
- (b) the Consultant's presence on or use of the Site;

Except to the extent the loss, damage or expense arises out of the wilful or reckless act or omission or breach of this Contract by CEWA. The Consultant agrees not to bring any Claim which it has released or purported to release under this clause 47.

- 50.3 The Consultant'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.
- 50.4 Subject to clause 47.5, but not withstanding anything else in this Contract to the contrary, neither CEWA or the Consultant shall be liable to each other for any Consequential Loss and CEWA and the Consultant agree that such loss or damages will not be claimed as direct loss or damage.
- 50.5 Nothing in this Contract limits the Consultant'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.
- 50.6 The indemnities and limitations in this clause 47 shall survive the termination or expiry of this Contract.

51 DISPUTE RESOLUTION

- 51.1 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 48.
- 51.2 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 48 (**Dispute Notice**).
- 51.3 If the dispute is not resolved within 21 days after the Dispute Notice is given to the other Party in accordance with clause 48.1, 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 48.
- 51.4 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).
- 51.5 The Parties shall continue to perform the obligations under this Contract while any Dispute is being resolved in accordance with this clause 48, 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 26 of this Contract.

52 FORCE MAJEURE

- 52.1 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.
- 52.2 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.
- 52.3 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.
- 52.4 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.
- 52.5 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.
- 52.6 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.
- 52.7 A Force Majeure Event does not include the failure to pay invoices as and when they fall due.

53 TERMINATION OF CONTRACT

- 53.1 CEWA may at any time, for any reason, and without cause, terminate or cancel this Contract or any associated Purchase Order by giving the Consultant 30 days written notice (**Termination Notice**).
- 53.2 CEWA's liability will be to pay for the Services provided to CEWA in accordance with the Contract prior to the date of termination specified in the Termination Notice.
- 53.3 The Consultant shall deliver any Deliverables paid for by CEWA in accordance with this Contract to the CEWA Representative.
- 53.4 For the avoidance of doubt, CEWA's maximum liability shall not exceed any amounts payable to the Consultant pursuant to this Contract.
- 53.5 CEWA may from time-to-time request that the Consultant provide an estimate of the costs that would be payable by CEWA to the Consultant if CEWA serves a Termination Notice. The

Consultant shall provide the estimate within 10 Business Days of the request by CEWA. If the Consultant 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 52.

53.6 In the event of a termination in accordance with this clause 50, CEWA will not be liable for any costs, losses or Claims except as specifically provided under this clause 50.

54 TERMINATION FOR PERFORMANCE

54.1 In the event of the Consultant failing to carry out the Contract to CEWA's satisfaction, this will be deemed to be a material breach of the Contract subject to termination in accordance with clause 52.

55 TERMINATION FOR BREACH

55.1 In the event that the Consultant or its Personnel, in the reasonable opinion of CEWA, breach any material term of this Contract, CEWA may serve a Notice of Default stating:

- (a) The nature of the breach that has been committed and either requiring the remedy of the breach by the Consultant 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 Consultant 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 Consultant); or
 - (iii) Terminate the Contract either in whole or in part from a specified date determined by CEWA.

55.2 Notwithstanding any other provision of this Contract, the following will be considered material breaches of the Contract, if the Consultant:

- (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.

55.3 The Consultant may terminate this Contract by notice to CEWA in the event that CEWA fails to pay a material amount due and owing to the Consultant 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).

55.4 A notice of the Consultant'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 Consultant 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.

56 CONSEQUENCES OF TERMINATION

- 56.1 Following termination of the Contract, the Consultant 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.
- 56.2 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.

57 CONFLICT OF INTEREST

- 57.1 If a conflict of interest arises in respect of the Consultant, the Consultant 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.

58 NOTICE

- 58.1 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 facsimile: on the same day as despatched, provided that a confirmation copy is posted; and
 - (c) Where delivered personally, on the date of actual delivery.

59 ASSIGNMENT

- 59.1 The Consultant 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.

60 RELATIONSHIP OF PARTIES

- 60.1 Nothing in the Contract creates a relationship of partnership, employment, joint venture, or agency between the parties.

60.2 The Consultant must not represent itself and must ensure that its Personnel do not represent themselves as being employees, partners, or agents of CEWA.

61 SEVERABILITY

61.1 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.

62 GOVERNING LAW

62.1 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:

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SCHEDULE 1 CONTRACT DETAILS

Contract Number	[insert Contract Number]
Consultant	Name [insert Contractor's full name] ABN/ACN [insert ABN/ACN/ARBN] Address [insert address]
Consultant'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 complete the Services]
Option to Extend Clause 7.2	[insert the term or terms that CEWA may extend the operation of the Contract]
Services Clause 1.1	Provide a brief description of the Consultancy Services in accordance with Schedule 3 Consultant's Brief
Site Clause 1.1	[insert the CEWA site where the Services will be provided or that the Consultant may have access to for the purpose of providing the Services]
Approvals Clause 31	The following Approvals are the responsibility of the Consultant: [detail the Approvals that are the responsibility of the Consultant, if any]
Payment Clause 24	The Consultant will submit to CEWA claim for payment in the form of a tax invoice for the Services provided at the end of each calendar month.

Price Adjustment Formula Clause 27.1	[Insert the mechanism or formula by which the rates payable for the Services will be adjusted (if any) or reference the relevant clause in the Price Schedule]
Timing for Price Adjustment Clause 27.2	[Insert the timing for adjustment of rates payable for the Services (e.g., annually) or reference the relevant clause in the Price Schedule]
Moral Rights Clause 41	[Insert the name of the Consultant as it should be attributed in any physical product of the Services]
Key Performance Indicators Clause 30.1	In accordance with Schedule 5 Key Performance Indicators
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 CONSULTANT'S FEE

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

SCHEDULE 3 CONSULTANT'S BRIEF

1 BACKGROUND

- 1.1 From its beginnings in 1843, when the first Catholic school opened in Perth, Catholic education in Western Australia has been responding to the needs of communities, providing a Catholic education for all families who seek it.
- 1.2 Today, Catholic Education Western Australia Ltd (CEWA) is a state-wide system of 163 schools and early years learning and care facilities, with schools and offices located across the Dioceses of Broome, Bunbury and Geraldton and the Archdiocese of Perth, supporting over 78,000 students.
- 1.3 CEWA is a Christ-centred and child-focused community of engaged learning environments, inspiring all to actively live the Gospel.
- 1.4 CEWA is governed by the Catholic Education Commission of Western Australia and its committees, whose strategic directions are based on the guiding principles of:
 - (a) Our school communities are central to the Church's mission of bringing the Good News of Jesus Christ to all;
 - (b) At the heart of all our decisions and actions is the dignity of each child;
 - (c) Central to our identity as a Christ-Centred community are our partnerships with families, parishes and schools;
 - (d) We respect the uniqueness of each person and community ensuring that quality Catholic education is focused on engaged learning;
 - (e) We commit to the principles of subsidiarity, co-responsibility and participation in enhancing Catholic Education across Western Australia and
- 1.5 We seek to provide access to Catholic Education, especially for the marginalised and disadvantaged.

2 OBJECTIVES

- 2.1 The key objective of this engagement includes the following:
 - (a) Insert key objective;
 - (b) Insert key objective;
 - (c) Insert key objective; and
 - (d) Insert key objective.

Consideration may need to be given on the level of detail required to detail the objectives and may include splitting the requirements or using a table format.

3 KEY ISSUES

- 3.1 Identify any key issues that CEWA is trying to overcome by engaging the consultant to complete the requirements. Detail any work that has already been undertaken or information that is available to guide the consultant's work.

4 OTHER CONSIDERATIONS

- 4.1 Detail any other considerations that should be considered by the consultant in preparing their submission, this could be any standards and guidelines applicable to the work, involvement of a steering group or committee with influence over the deliverables.

5 CONSTRAINTS

- 5.1 Are there any constraints or limitations that need to be considered by the consultant when preparing their brief, this could be time limitations, staged delivery, out of scope activity that should be excluded from the proposal, restraints on access to people and property.

6 RESOURCES

- 6.1 The Consultant shall ensure that it identifies and commits the necessary resources to undertake the analysis, including any necessary specialist sub-consultants and sub-contractors required to complete the requirements.
- 6.2 In development of any recommendations and deliverables under the Contract, the Consultant shall allow for the involvement of CEWA senior management (as required) including, where applicable the CEWA steering committee and subject matter experts.
- 6.3 Detail any other resourcing impacts that should be considered by the consultant.

7 METHODOLOGY

- 7.1 To ensure the proposed framework strategically addresses the objectives of the engagement, the Consultant's methodology shall include the following minimum requirements:
- (a) Detail minimum requirements to be included in methodology;
 - (b) Detail minimum requirements to be included in methodology; and
 - (c) Detail minimum requirements to be included in methodology.

8 DELIVERABLES

Clearly detail the deliverables, format, and due date of the outcomes to be delivered by the Consultant.

- 8.1 The Consultant shall provide the following Deliverables under the Contract:

Deliverable	Format	Due Date
First Draft Report	Word or PDF document	DD/MMM/YYYY
Second Draft Report	Word or PDF document	DD/MMM/YYYY
Final Report	Word or PDF document	DD/MMM/YYYY
Executive Presentation	PowerPoint	DD/MMM/YYYY

- 8.2 Any reports to be delivered under this Contract shall include the following key elements:
- (a) Executive Summary;

- (b) Details of the methodology undertaken;
- (c) Details on the issues addressed as part of the engagement; and
- (d) Outcomes and recommendations arising from the engagement.

8.3 The Deliverables under the Contract shall be hold points for the Consultant and the Consultant shall allow for the review and feedback from CEWA that shall be addressed and incorporated in a revised draft or subsequent Deliverable by the Consultant.

9 TIMELINE

Detail the proposed timeline applicable to the provision of the Deliverables to CEWA by the Contractor.

9.1 The key dates under the Contract are:

Description	Due Date
Contract Execution	DD/MMM/YYYY
Contract Commencement (Indicative)	DD/MMM/YYYY
Contract Completion (Indicative)	DD/MMM/YYYY

9.2 The Consultant shall commence the Contract within 14 days of the award of the Contract by CEWA. The final Deliverables under the Contract must be agreed and delivered to CEWA no later than **X** weeks from the date of award of Contract.

10 PAYMENT MILESTONES

Payment of the Contract should be determined on a case-by-case basis and may be better aligned to the Deliverables under the Contract.

10.1 CEWA shall remunerate the Consultant for services delivered under the Contract in the preceding 30-day period.

10.2 Each invoice provided by the Consultant shall be in a form acceptable to CEWA and contain the following minimum information to substantiate the work completed under the Contract up to the date of the invoice:

- (a) The Purchase Order;
- (b) The Contract Number;
- (c) The identity and ABN of the Consultant;
- (d) A description of the work completed;
- (e) The number of hours completed under the Contract;
- (f) The price for delivery of the work in accordance with the Consultant's Fee; and
- (g) Any other information as reasonably requested from CEWA from time to time.

11 REPORTING

11.1 The Consultant will be required to provide status reports to the CEWA Representative on a minimum weekly basis or as otherwise agreed between the parties. The report shall include

details on the progress of the work under the Contract against the project schedule, any identified or emerging issues and the current expenditure against the Consultant's Fee.

Provide details on the content and timing of any other reports required to be provided by the Contractor in accordance with the Contract.

SCHEDULE 4 KEY PERSONNEL

This Schedule sets out the Key Personnel of the Consultant to deliver the Services under the Contract.

SCHEDULE 5 KEY PERFORMANCE INDICATORS

This Schedule sets out the Key Performance Indicators for the purpose of assessing the Consultant's performance of the Services under clause 30. Each Key Performance Indicator needs to be listed and the requirements to meet each Key Performance Indicator must be clearly stated.

SCHEDULE 6 OCCUPATIONAL HEALTH & SAFETY

- 1.1 For the purposes of this clause, a worker includes an employee or independent Consultant.
- 1.2 The Consultant acknowledges that it has control of the manner that the Services are provided under this Contract.
- 1.3 The Consultant 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 Consultant has and will continue to take all reasonably practicable measures to ensure that it complies with these obligations.
- 1.4 The Consultant will provide a safe working environment such that the Consultant and its workers are able to safely undertake tasks related to this Contract.
- 1.5 The Consultant 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 provision of the Services by the Consultant under this Contract.
- 1.6 The Consultant 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 Consultant must notify CEWA of any safety incidents that occur during the Contract as soon as practicable after the incident occurs.

SCHEDULE 7

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 provision chains.
- 1.2 The Consultant is an independent entity; however, the Consultant's business practices and actions may impact workers and CEWA's reputation.
- 1.3 Accordingly, CEWA expects the Consultant and the Consultant's suppliers, employees, agents, specialist sub-consultants and sub-contractors, to adhere to this Code of Conduct.

2 PRINCIPLES

- 2.1 In addition to any specific obligations under this Contract, the Consultant 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, specialist sub-consultants and sub-contractors, to ensure that any risks or people and workers impacted by modern slavery in the Consultant's provision chains or any parts of the Consultant'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 Consultant 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 Consultant's employment practices shall be in full compliance with all applicable laws and regulations and in accordance with the following requirements.
- 3.2 The Consultant 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 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 Consultant shall not deduct more than a reasonable proportion of income from workers' wages.

3.3 The Consultant shall have systems and procedures in place (including staff and Consultant 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 Consultant within 24 hours and request that the violation be remedied in consultation with CEWA.

5.2 If the Consultant 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 provision chains.

SCHEDULE 8 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.