**[Version – 14 March 2019]**

*Draft / Execution Version*

Formal Instrument of Agreement

Project: [Enter a description of the project]

Australian Catholic University Limited

[Contractor Name]

AS4905-2002 Minor Works Contract Conditions Superintendent Administered

*[ BCODE] [LCODE]*

Contents

1. Definitions 1

2. Undertaking the Works 1

Attachments 3

Part A 4

Part B 6

1. Interpretation and construction of Contract 6

2. Nature of Contract 7

3. Security 7

5. Discrepancies 8

8. Protection 8

9. Care of the work and reinstatement of damage 9

10. Damage to persons and property other than WUC 9

14. Insurance provisions 9

17. Site 9

18. Materials and work 10

20. Time and progress 11

22. Variations 13

23. Payment 14

26. Notification of Claims 16

28 Project Conditions 16

29. GST 17

30. Drawing and Specifications 19

31. Design Obligations 19

32. Work Health and Safety 19

33. Miscellaneous 19

34. Provisional Sum 20

Part C 21

Schedule A: Table of Drawings and Specifications 24

Schedule B: Form Of Contractor’s Statutory Declaration for Australian Capital Territory, Queensland and Victoria 25

Schedule B: Form of Contractor’s Statement for New South Wales 26

Schedule C: Programme of Works 29

Schedule D: Copies of Drawings and Specification 30

Formal Instrument of Agreement

Parties

1. **Australian Catholic University Limited** **ABN 15 050 192 660** of 40 Edward Street, North Sydney NSW 2060 (**Principal**).
2. **[Contractor Name]**  **ABN [Contractor ABN]** of [ Contractor Address ] (**Contractor**).

Background

1. The *Principal* has decided to engage the *Contractor* to undertake the *Works* on the terms and conditions contained in this *Contract*.

Operative provisions

# Definitions

Unless the context otherwise requires:

**Contract Conditions** means the Contract Conditions AS 4905-2002 as amended by the special conditions in Annexure Part B.

Other words and expressions used in this *Contract* have the same meaning as in the Contract Conditions.

# Undertaking the Works

### The *Contractor* shall undertake the *WUC* and the *Principal* shall pay the *contract* *sum* to the *Contractor* on the terms and conditions contained in the *Contract* which is comprised in the following documents:

#### Formal Instrument of Agreement;

#### Contract Conditions (including Annexure Part B (Special Conditions));

#### Annexure Part A;

#### Drawings and specifications listed in Schedule A;

#### Form of Contractor's statutory declaration; and

#### any documents expressly incorporated into the Contract by any of the above.

### In the event of any inconsistency or conflict between the Contract documents, the order of precedence set out above shall apply.

### The parties agree that the *contract sum* is a fixed lump sum of $[Contract Sum] excluding GST.

Executed as an agreement

Date

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** for and on behalf of **Australian Catholic University Limited ABN 15 050 192 660** by its authorised representative: |  | | |
| Signature of Authorised Representative | Signature of Witness | | |
| Name of Authorised Representative (Block Letters) | | Name of Witness (Block Letters) |

|  |  |
| --- | --- |
| **Executed** by **[Contractor Name] ABN [Contractor ABN]** in accordance with section 127 of the *Corporations Act* *2001* in the presence of: |  |
| Signature of Director | Signature of Director / Company Secretary |
| Name of Director (Block Letters) | Name of Director / Company Secretary (Block Letters) |

Attachments

Note that AS4905-2002 is incorporated by reference

1. Annexure Part A to the Contract Conditions
2. Annexure Part B to the Contract Conditions
3. Annexure Part C to the Contract Conditions
4. Schedule A: Table of Drawings and Specifications
5. Schedule B: Form of Contractor's Statutory Declaration
6. Schedule C: Contractor’s programme
7. Schedule D: Copy of Drawings and Specifications

Part A

**Annexure to the Australian Standard**

**Minor works contract conditions (Superintendent administered)**

**AS 4905–2002**

|  |  |  |
| --- | --- | --- |
| *Item* |  | This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to these Minor works contract conditions and shall be read as part of the *Contract*. |
|  | *Principal (clause 1)* | AUSTRALIAN CATHOLIC UNIVERSITY LIMITED  ABN 15 050 192 660 |
|  | *Principal’s address* | 40 Edward Street, North Sydney NSW 2060  Phone: (02) 9739 2240 Fax: (02) 9739 2866 |
|  | *Contractor*  *(clause 1)* | [Contractor Name]  ACN or ABN: [ CONTRACTOR ABN ] |
|  | *Contractor’s address* | [ CONTRACTOR ADDRESS]  Phone: Fax: |
|  | *Superintendent*  *(clause 1)* | [ Superintendent details ] |
|  | *Superintendent’s address* | [ Superintendent address]  Phone: Fax: |
|  | *Date for practical completion* (clause 1) | [INSERT DATE] |
|  | *Contractor’s security* |  |
|  | * + 1. Form (clause 3) | Unconditional bank guarantee from an Australian bank with an expiry date of no less than 2 years after the date for practical completion identified in Item 7 of Part A. |
|  | * + 1. Amount or maximum percentage of *Contract Sum* (clause 3) | 2 x Bank Guarantees each for 2.5% of the *Contract Sum* to a total of 5% of the *Contract Sum* |
|  | * + 1. If retention moneys, percentage of each payment certificate (clause 3) | Not Applicable |
|  | * + 1. Time for provision (except for retention moneys) (clause 3) | To be provided prior to commencement of *Works* on *site* |
|  | Amount of limit of indemnity for damage to other property of the *Principal* (subclause 10.1(a)) | The *Contractor’s* indemnity is unlimited |
|  | The amount of contract works insurance cover (clause 11) | *Contract Sum* plus 20% |
|  | The amount of public liability insurance cover in respect of any one occurrence shall not be less than (clause 12) | $20,000,000 |
|  | The time for giving access to the *site* to the *contractor* (clause 17) | 14 days |
|  | Liquidated damages (subclause 20.5) |  |
|  | * + 1. Rate | $ [insert] per day |
|  | * + 1. Limit | No limit on liquidated damages |
|  | Delay damages: rate per working day (subclause 20.6) | No delay damages are payable under this contract. |
|  | Defects liability period (clause 21) | 52 weeks after *practical completion* |
|  | Time for progress claims (subclause 23.1) | 25th day of each calendar month |
|  | The rate of interest on overdue payments (subclause 23.4) | 10% per annum |
|  | Arbitration (subclause 27.3) |  |
|  | * + 1. The person to nominate an arbitrator | If none stated, the Chairman of the State or Territory Chapter of the Resolution Institute where the Site is located. |
|  | * + 1. Rules for arbitration | Subject to the Special Conditions in Part B, the IAMA Arbitration Rules |
|  | *Contract Sum* | $ [Contract Sum] (excl. GST) |
| 20. | *Provisional Sums* | |  |  | | --- | --- | | **Item** | **Amount (excl. GST)** | |  |  | | [Insert] | $[Insert] | |  |  | |  | | | **Total (included in *Contract Sum*)** | **$[Insert]** | |  | | |
|  | *Site address* | [Insert] |

Part B

**Annexure to the Australian Standard**

**Minor works contract conditions (Superintendent administered)**

**AS 4905–2002**

**Deletions, amendments and additions**

The following deletions, amendments and additions are made to AS 4905-2002:

# 1. Interpretation and construction of Contract

In clause 1 add or amend, as the case may be, the following definitions:

***Business Day*** has the meaning in the *SOP Act*;

***compensable cause*** means:

### any act, default, or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or

### a *variation* directed by the *Principal*;

***contract sum*** means the fixed price lump sum accepted by the *Principal*;

***Design Documents*** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including, where the context so requires, those to be created by the *Contractor)* for the construction of the *Works*;

**Modern Slavery Legislation** means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), and any similar legislation in force from time to time in any State of Territory of Australia;

***practical completion*** is that stage in the carrying out and completion of WUC when:

### the WUC are complete except for minor defects:

#### which do not prevent the WUC from being reasonably capable of being used for their stated purpose;

#### which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and

#### the rectification of which will not prejudice the convenient use of the WUC;

### those tests which are required by the Contract to be carried out and passed before the WUC reach practical completion have been carried out and passed;

### all warranties and performance guarantees have been provided to the *Superintendent*, together with all other documents and other information required under the Contract which, in the Superintendent’s opinion, are essential for the use, operation and maintenance of the WUC have been supplied, including without limitation any permit(s) required to allow occupation and use of the *WUC*; and

### all plant and equipment has been fully commissioned in accordance with the drawing and specifications;

***Provisional Sum*** means an item of work (including labour and materials) for which the *Contractor*, after making reasonable enquiries was unable to give a definite price at the time this *Contract* was entered into and for which the *Contractor* has made an allowance in the *Contract Sum* as detailed in Item 20of Annexure Part A to this *Contract*;

***qualifying cause of delay*** means:

### any act, default, or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor)*;

### statewide industrial action which has not been caused or contributed to by the Contractor;

### a change in legislative requirements;

### a *variation* directed by the *Principal*; or

### a latent condition in accordance with clause 28.2;

***SOP Act*** means the building and construction industry security of payment legislation operative in State or Territory where the Site is located; and

***WH&S Legislation*** means the occupational or work health and safety legislation operative in the State or Territory where the Site is located.

# 2. Nature of Contract

Clause 2 is deleted and replaced with the following:

**2.1 Performance and payment**

In consideration for the fulfilment by the *Contractor* of all of its obligations under the *Contract*, the *Principal* shall pay to the *Contractor* the *contract* *sum*, as adjusted in accordance with the *Contract*.

# 3. Security

Insert the following at the end of clause 3.1:

Where any *security* has an expiry date, the *Contractor* must replace that *security* at least 2 months' prior to the expiry date being reached if, at that time, the event which triggers the obligation to return that security has not occurred, failing which, the *Principal* is entitled to have recourse to that security pursuant to clause 3.2 and hold the cash as *security*. Any replacement security:

* + 1. may have an expiry date, provided the expiry date is no earlier than 12 months after the date the replacement security is delivered to the *Principal*; and
    2. must otherwise be no less favourable to the *Principal*, satisfy the requirements of this clause 3.1 and be for the same value as the *security* it is replacing.

Clause 3.2 is deleted and replaced with the following:

**3.2 Recourse**

The *Principal* may have recourse to any of the security to pay for any costs, expenses or damages which the *Principal* claims that it has incurred or reasonably considers it might in the future incur pursuant to any right of the *Principal* under or relating to this *Contract* or as a consequence of any act or omission of the *Contractor* which the *Principal* asserts constitutes a breach of this *Contract*.

Clause 3.4 is deleted.

# 5. Discrepancies

The second paragraph of clause 5 is deleted and replaced with the following:

The *Contractor* shall not be entitled to any *EOT* or adjustment to the contract sum or other monetary compensation arising from any inconsistency, ambiguity or discrepancy in any document prepared for this *Contract* or any direction by the *Superintendent* under this clause 5.

# 6. Assignment and subcontracting

Clause 6.1 is deleted and replaced with the following:

**6.1 Assignment**

The *Contractor* shall not assign the *Contract* or allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest respectively thereunder without the prior approval of the *Principal*.

# 7. Legislative requirements

The second paragraph of clause 7 is deleted and replaced with the following:

If a legislative requirement:

(a) necessitates a significant change:

#### to the WUC; or

#### in a fee or charge or payment of a new fee or charge; and

(b) comes into effect after the date of this *Contract* and could not reasonably have been anticipated by a competent *Contractor*; and

(c) causes the *Contractor* to incur more or less cost than would otherwise have been incurred,

then provided the *Contractor* has taken all proper and reasonable measures to avoid or minimise the extra costs resulting from such change, the difference in costs incurred by the *Contractor* as a result of the change in legislative requirement shall be assessed by the *Superintendent* and added to or deducted from the contract sum.

# 8. Protection

The second paragraph of clause 8 is deleted and replaced with the following:

If the *Contractor* damages property, the *Contractor* shall notify the *Superintendent* in writing within 5 *Business* *Days*, and shall rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

# 9. Care of the work and reinstatement of damage

Clauses 9.3(e) and 9.3(f) are deleted.

# 10. Damage to persons and property other than WUC

Clause 10.2 is deleted.

# 14. Insurance provisions

Insert the following subclause at the end of clause 14:

If the *site* is not owned by the *Principal,* the *Contractor* must ensure that all insurances cover the interests of the owner of the *site.*

# 17. Site

Clause 17 is amended by deleting the words “possession of” wherever they appear and substituting “access to”.

Clause 17.2 is inserted as follows:

**17.2 Works by other contractors**

The *Contractor*:

(a) shall permit the execution of *work* on the *site* by other contractors (whether engaged by the *Principal* or any authority) and shall co-operate with them and coordinate the *Contractor’s* work with their work; and

(b) shall not unreasonably interfere with the other contractors in the performance of the other contractor’s work.

The *Principal* shall endeavour to ensure that the *Contractor’s* reasonable requirements in respect of other contractors are implemented. If requested by the *Contractor*, the *Principal* shall provide to the *Contractor* the names of the other contractors engaged by the *Principal*.

Clause 17.3 is inserted as follows:

**17.3 Disruption to nearby occupiers**

(a) The *Contractor* acknowledges that the *Works* are to be carried out in, around and adjacent to parts of an operating university (“the University”) which will continue to operate and be occupied by students and staff who must be able to access facilities conveniently and safely at all times.

(b) The *Contractor* agrees that all unduly noisy, dusty or otherwise disruptive works shall only be carried out after the *Contractor* has obtained the prior approval of the *Superintendent* as to the time and manner in which those works or works of that type or in that part of the site are to be undertaken.

(c) The *Contractor* must take all reasonable steps to minimise or avoid disruption and/or inconvenience to any adjoining owners, students, staff and visitors or invitees to the University, including in respect of roads, footpaths and access to and around the University.

(d) The *Contractor* acknowledges that the *contract* *sum* is deemed to include due allowance for undertaking works in accordance with all requirements of the specifications and otherwise in such a manner that is reasonably necessary in order to avoid disrupting or unduly inconveniencing students, staff, visitors and invitees to the University.

(e) The *Contractor* must comply with any *direction* the *Superintendent* acting reasonably may give in respect of minimising or avoiding disruption or inconvenience to students, staff, visitors and invitees.

(f) The *Contractor* acknowledges and agrees that the *Superintendent’s* decision on when and how the *Works* can be undertaken is final and binding and will give the highest priority to avoiding disruption to students, staff, visitors and invitees.

(g) The *Contractor* agrees that any fee, payment or charge incurred by the *Principal* as a result of the *Contractor* or its employees, agents or subcontractors negligently or otherwise triggering any fire or other alarm at, adjacent to or near the *site* shall be reimbursed to the *Principal* andis a debt due and owing from the *Contractor* to the *Principal*. This obligation shall extend until the expiry of the defects liability period identified in Item 15 of Annexure Part A to this *Contract.*

# 18. Materials and work

Clause 18.1 is deleted and replaced with the following:

**18.1 Quality of material and work**

The *Contractor* shall execute and complete the *WUC* as follows:

(a) in accordance with the provisions of this *Contract*;

(b) in a proper and workmanlike manner, ensuring that the standard and quality of workmanship and materials to be incorporated in the *WUC* are at least of the standard and quality specified in the drawings and specification;

(c) in the absence of any other express provision in this *Contract*, any material or standard of workmanship, as the case may be, shall be a kind which is both suitable for its purpose and consistent with the nature and character of’ that part of the *WUC* in which it is to be used;

(d) any materials not otherwise specified shall be new;

(e) in a safe manner and in compliance with the *WH&S* *Legislation*;

(f) adopting industry standard practices of the respective trades relevant to the carrying out of the *WUC;* and

(g) where the *work* includes design, development or completion of the design of part of the *Works*, a performance specification or any combination of these, the *Contractor* shall:

(i) exercise skill, care and diligence to the standard expected of a specialist engineer or consultant as the case may be providing design services in Australia of a similar nature in respect of projects comparable to the *WUC*;

(ii) ensure that the relevant parts of the *WUC*, when constructed, are functional, fit for their stated purpose and comply with the intent of the *Contract* documents; and

(iii) ensure the work has been certified by the designer who must have appropriate qualifications and experience as complying with the *Contract* requirements, including this clause, subsequent to design of the relevant part being completed and prior to work on the *site* commencing in respect of the part or item of the *WUC*.

New clause 18.3 is inserted as follows:

**18.3 Warranties**

(a) The *Contractor* will obtain manufacturers’ and other warranties for plant, materials and work incorporated into the *Works* as required by the *Contract*.

(b) In addition to any other requirement the *Contractor* must ensure that all warranties are:

(i) in favour of the *Principal*;

(ii) legally enforceable by the *Principal*;

(iii) capable of assignment by the *Principal*;

(iv) delivered to the *Superintendent* prior to *practical* *completion*; and

(v) to be in a form approved by the *Superintendent*.

(c) Nothing in this clause or any express warranty provided shall exclude any condition or warranty implied by the *Competition and Consumer Act 2010* or the law of contract and any express warranty shall be in addition to any other right that the *Principal* or any subsequent purchaser may have at law.

**18.4 Acceptance of defective material or work**

Notwithstanding any other provision of this *Contract*, the *Superintendent* may notify the *Contractor* that the *Principal* elects to accept the material or *work* notwithstanding that it is not in accordance with the *Contract*. In that event the resulting increase or decrease in the value to the *Principal* of the *Works* and any other loss suffered by the *Principal* shall be valued under clause 22.2 and the *contract sum* is adjusted accordingly.

# 20. Time and progress

Delete the second paragraph of clause 20.1 and replace with:

If it becomes evident to the *Contractor* that anything, including an act or omission of the *Principal*, an employee or agent of the *Principal* may delay the *WUC*, the *Contractor* shall immediately and in any event within 5 *Business* *Days* notify the *Superintendent* in writing with details of the possible delay and its cause.

Delete clause 20.2 and replace with:

**20.2 Claim**

If the *Contractor*:

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

(b) gives the *Superintendent*, within 14 days of when the *Contractor* should reasonably have been aware of that delay arising, a detailed written claim for an *EOT* setting out the cause of the delay, the activities delayed and the effects on the construction program,

the *Contractor* shall, subject to compliance with this clause 20, be entitled to such *EOT* for carrying out *WUC* (including reaching *practical* *completion*) as the *Superintendent* assesses. If the delay continues for more than 14 days the *Contractor* shall give a further notice every 14 days until the delay ceases.

It is a condition precedent to the granting of an *EOT* that:

(c) the delay claimed affects the critical path of the progress of the *Works*; and

(d) in the reasonable opinion of the *Superintendent* the *Contractor* will actually be delayed in achieving *practical* *completion* of the *WUC*; and

(e) the *Contractor* has, in the reasonable opinion of the *Superintendent*, taken all practicable steps to avoid or minimise the delay; and

(f) the *Contractor* provides the notices containing the details required by this clause within the times stipulated.

Delete clause 20.3 and replace with:

**20.3 Extension of time**

Promptly after receiving such claim for *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written assessment of the claim and the adjustment, if any, to the *date* *for* *practical* *completion*.

Notwithstanding that the *Contractor* has not claimed an *EOT*, the *Superintendent*, with the prior approval in writing of the *Principal*, may at any time prior to *practical* *completion* by notice in writing to the *Contractor* extend the *date* *for* *practical* *completion* of the *Works* for any reason. The *Superintendent* is under no obligation to exercise this discretion reasonably or fairly for the benefit of the *Contractor*.

Delete clause 20.6 and replace with:

**20.6 No adjustment of contract sum due to delay**

(a) Except as provided by clause 20.6(b), the *Contractor* is not entitled to any adjustment to the *contract* *sum* or payment of any amount whether under the *Contract* or not as compensation for any cost, loss, expense or damage which the *Contractor* may incur as a result of delay or disruption, including delays for which an *EOT* has or should have been granted pursuant to the *Contract*. Any *EOT* so granted and any amount payable is deemed to be in full settlement of any cost, loss, expense or damage the *Contractor* may suffer due to delay or disruption.

(b) If:

(i) the *WUC* are delayed due to a *compensable* *cause*; and

(ii) the *Contractor* gives the *Superintendent* a detailed written claim which specifically refers to this Clause 20.6(b), within 14 days of when the *Contractor* should reasonably have been aware of the cause of the delay occurring; and

(iii) the *Contractor* receives an *EOT* to the *date* *for* *practical* *completion* on account of that delay;

the *contract* *sum* shall be increased by the lesser of:

(iv) the actual delay costs incurred; and

(v) the delay damages set out in Item 14;

for each working day of delay where the *Contractor* is entitled to an *EOT* in full satisfaction of all cost, loss, expense or damage the *Contractor* may suffer or incur due to the delay or disruption.

# 21. Defects liability

The following shall be added to clause 21:

"The *direction* may provide that in respect of the work of rectification there shall be a separate *defects liability period* of a stated duration not exceeding 12 months. The separate *defects liability period* shall commence on the date the *Contractor* completes the work of rectification. Clause 21 shall apply in respect of the work of rectification and the *defects liability period* for that work of rectification.

If the *Contractor* has not completed the rectification of any defects or omission within 60 days after notification in writing from the *Principal* or the *Superintendent*, the *Principal* may have recourse to any security the *Principal* may be holding and utilise such moneys to arrange the rectification of the defect or omission by others."

# 22. Variations

Clause 22.2 is amended by deleting subparagraph (d) and the following 2 lines and replacing it with the following:

"(d) reasonable rates and prices in respect of the direct cost of the variation to which shall added, or in the case of a deletion of works, in respect of preliminaries, overheads and profit an amount equal 10% of the direct cost of the works added or deleted as the case may be."

The following subclauses are inserted at the end of clause 22:

**22.3 Notice of variation**

If the *Contractor* considers any instruction given by the *Superintendent* amounts to a *variation* but is not so described the *Contractor* must within 14 days of the receipt of the instruction notify the *Superintendent* accordingly and provide details of the anticipated cost of the instruction. If the *Contractor* fails to notify the *Superintendent* within the time specified the *Contractor* shall not be entitled to any adjustment by way of increase of the *contract* *sum*.

**22.4 Provisional Sums**

(a)Any allowance for provisional sums for items in the *WUC* (**Provisional Sum**) shall be included in the *contract* *sum*.

(b) The Provisional Sum shall be priced as if it were a *variation*, and the *contract* *sum* adjusted accordingly.

# 23. Payment

Delete the third paragraph of clause 23.1 and replace with:

Each progress claim shall be given in writing to the *Superintendent* and must include:

(a) details of the value of the *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*;

(b) a statutory declaration in the form set out in Schedule B; and

### (c) such other information as may be required by the *Superintendent*.

Delete clause 23.2 and replace with the following:

**23.2 Certificates**

The *Superintendent*, who acts on behalf of the *Principal* in receiving payment claims and issuing payment certificates or schedules, shall issue to the *Contractor* and provide a copy to the *Principal* within 10 *Business* *Days* after the date of receipt of the claim by the *Superintendent* a progress certificate that the whole of the amount mentioned in each claim (and if not the whole, then which parts thereof, including reasons why any part(s) of a claim are not reasonably payable) is reasonably payable on the basis of the extent of the *WUC* executed.

At any time, the *Superintendent* may by a further certificate correct any error which has been discovered in any previous certificate, other than a *certificate* *of* *practical* *completion* or a final certificate.

If the *Contractor* does not make a progress claim in accordance with Annexure Part A, the *Superintendent* may issue the progress certificate with details of the calculations.

The *Principal* shall within 15 *Business* *Days* after the *Superintendent* receives the progress claim, pay to the *Contractor* the balance of the progress certificate. If the balance is a negative balance, the *Contractor* shall pay that balance to the *Principal* within 5 *Business* *Days* of receiving written notice thereof.

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

Except as provided elsewhere in the *Contract*, the *Principal* shall not be obliged to pay for unfixed plant and materials.

In the fourth paragraph of clause 23.3 delete the word “conclusive”.

The following subclauses are inserted at the end of clause 23:

**23.5 Provision of as-built drawings and warranties**

1. The Contractor shall provide all as-built drawings within 14 days after Practical Completion and the reduction of security under clause 3.3 shall be deferred until 14 days after the as-built drawings have been provided to the Superintendent.
2. Notwithstanding anything in this clause 23 the *Principal* shall be entitled to withhold final payment in respect of the *WUC* until such time as the *Contractor* has provided to the *Principal* such warranties as are required under clause 18.3.

**23.6 Set-offs by Principal**

The *Principal* may, without limiting any other right which it may have under the *Contract* or at law but only to the extent permitted by law, deduct from any amount owing to the *Contractor* any amount which the *Principal* may have paid on behalf of the *Contractor*, whether expressly authorised by the *Contract* or which the *Principal* acting reasonably considers necessary in the interests of completing the *WUC* or is otherwise due and owing to the *Principal* by the *Contractor* in connection with the *Contractor* or any claim for money, whether for damages or otherwise, which the *Principal* acting reasonably and bona fide has against the *Contractor*.

Any amount remaining after such deduction may be recovered by the *Principal* as a debt due and owing.

**23.7 SOP Act**

(a) The *Contractor* agrees with the *Principal* that the date prescribed in subclause 23.1 as the date on which the *Contractor* must make a progress claim is, for the purposes of section 12 of the *SOP* *Act*, the "reference date" (as defined in the SOP Act).

(b) For the purposes of section 21(3) of the *SOP* *Act*, the *Contractor* irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the *SOP* *Act* in respect of the subject matter of this *Contract*.

(c) When an adjudication occurs under the *SOP* *Act*, and the *Principal* has paid an adjudicated amount to the *Contractor*:

(i) the amount will be taken into account by the *Superintendent* in issuing a progress certificate under clause 23.2; and

(ii) if it is subsequently determined pursuant to the *Contract* that the *Contractor* was not entitled under the *Contract* to payment of some or all of the adjudicated amount that was paid by the *Principal* (overpayment), the overpayment will be a debt due and payable by the *Contractor* to the *Principal* which the *Contractor* must pay to the *Principal* upon demand and in respect of which the *Contractor* is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

(d) The *Contractor* shall:

(i) comply with the *SOP* *Act*, including without limitation responding to any payment claim under that Act which it receives in relation to the *WUC* within 10 *Business* *Days*;

(ii) notwithstanding any other provision of this *Contract*, serve a copy of any such notice or application under the *SOP* *Act* on the *Superintendent* by hand delivery;

(iii) when the *Contractor* becomes aware that a subcontractor is entitled to suspend work pursuant to the *SOP* *Act*, promptly and without delay give the *Superintendent* a copy of any written communication of whatever nature in relation to the *SOP* *Act* which the *Contractor* receives from a subcontractor,

and the *Contractor* acknowledges that this obligation represents a fundamental term of this *Contract*, a breach of which is a substantial breach of this *Contract* by the *Contractor*.

(e) Failure by the *Superintendent* to set out in a payment schedule an amount which the *Principal* is entitled to retain, deduct, withhold or set-off (whether under this *Contract* or otherwise) from the amount which would otherwise be payable to the *Contractor* by the *Principal* will not prejudice the *Principal’s* right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

(f) If the *Principal* becomes aware that a subcontractor is entitled to suspend *work* pursuant to the *SOP* *Act*, the *Principal* may (in its absolute discretion) pay the subcontractor such money that is or may be owing to the subcontractor in respect of that work, and any amount paid by the *Principal* shall be a debt due from the *Contractor* to the *Principal*.

# 26. Notification of Claims

The text of clause 26.1 is amended to read as follows:

The *Principal* shall not be liable upon any claim by the *Contractor* or for any extra cost or expense in respect of or arising out of any breach of contract or any direction or approval by the *Superintendent* unless within 28 days after the first day upon which the *Contractor* could reasonably have been aware of the breach, the *Contractor* has given to the *Superintendent* a written notice of claim with particulars or a notice of dispute under subclause 27.1.

Clause 26.2 is deleted.

# 28 Project Conditions

**28.1 Site Conditions**

Subject to clause 28.2, the *Contractor* accepts sole responsibility for and assumes the risk of all costs, losses and expenses arising out of the physical conditions and characteristics of the *site* and its surroundings encountered in the execution of the Works. The *Contractor* is deemed to have:

(a) inspected the *site* and other associated work areas to ascertain the extent of the *site*, the *site* conditions, and as far as practicable, the existing buildings and their surroundings;

(b) examined all information and documentation made available to the *Contractor* by the *Principal*;

(c) obtained all information relevant to the risks, contingencies and other circumstances which could affect the *Works* and which is obtainable by making reasonable enquiries; and

(d) ascertained as far as practicable the nature of the works and materials necessary for the execution of the works under this *Contract*, the means of access to and facilities at the *site* and transport deliveries to the s*ite*.

**28.2 Latent Conditions**

The *Principal* agrees that if the *Contractor* encounters asbestos, hazardous waste, ground contamination or other contamination, which differs materially from the physical or site conditions which could reasonably have been anticipated by an experienced and competent building contractor having undertaken the site inspections required under clause 28.1, the additional or varied *work* shall be valued as a *variation* pursuant to clause 22.2 and the *contract sum* adjusted accordingly.

# 29. GST

**29.1 Definitions**

The following definitions apply in this clause:

‘**Consideration’** means any amount payable or treated as payable (whether monetary or not monetary) for a supply made under this *Contract*;

‘**GST’** means Goods and Services Tax under the GST law;

‘**GST** **law’** means the *A New Tax System (Goods and Services Tax) Act 1999*;

‘**Input** **Tax** **Credit’** has the same meaning as “Input Tax Credit” under the GST law;

‘**Tax** **Invoice’** means an invoice for payment complying with the requirements of the GST law.

**29.2 GST exclusive**

The parties acknowledge that unless specified otherwise, any Consideration payable under the *Contract* has been negotiated without any allowance for a GST.

**29.3 Contract sum**

The *contract sum* is deemed to include all rates, taxes (excluding GST), charges and duties of any description imposed by any authority which are payable in respect of or relating to the *WUC*.

**29.4 Registration**

(a) The *Contractor* warrants that it is registered for GST with an ABN and that the ABN it has quoted is correct. The *Contractor* must advise the *Principal* immediately, if its registration status changes.

(b) If the *Principal* has quoted an ABN, it warrants that it is correct and that the *Principal* will advise the *Contractor* immediately, if its registration status changes.

**29.5 Warranties by *Contractor***

(a) The *Contractor* warrants that the *contract sum* does not include any Input Tax Credits that the *Contractor* may be able to claim in respect of acquisitions by the *Contractor* from any third party supplier (including without limitation any subcontractor).

(b) The *Contractor* warrants that claims submitted under any provision of the *Contract* do not or will not include any Input Tax Credits that the *Contractor* may be able to claim in respect of acquisitions by the *Contractor* from any third party supplier (including without limitation any subcontractor).

**29.6 Amount *Contractor* to pay**

Except if expressly provided otherwise in the *Contract*, if the *Contractor* is to indemnify, reimburse, pay a contribution or pay damages (including liquidated damages pursuant to clause 20.5) to the *Principal* under any provision of the *Contract*, the amount the *Contractor* must pay the *Principal* is:

(a) reduced by any Input Tax Credit directly obtained or obtainable by the *Principal* in respect of any acquisitions by the *Principal* in relation to that indemnity, reimbursement, contribution or damages; and

(b) increased by any GST the *Principal* has paid or is liable for on that indemnity, reimbursement, contribution or damages.

**29.7 Amount *Principal* to pay**

Except if expressly provided otherwise in the *Contract*, if the *Principal* is to indemnify, reimburse, pay a contribution or pay damages to the *Contractor* under any provision of the *Contract*, the amount the *Principal* must pay the *Contractor* is:

(a) reduced by any Input Tax Credit directly obtained or obtainable by the *Contractor* in respect of any acquisitions by the *Contractor* in relation to that indemnity, reimbursement, contribution or damages; and

(b) increased by any GST the *Contractor* has paid or is liable for on that indemnity, reimbursement, contribution or damages.

**29.8 Payment certificates**

On receiving any payment certificate from the *Superintendent*, the *Contractor* must prepare a Tax Invoice, equal in value to the payment certificate, and present both documents to the *Principal* for payment.

# 30. Drawing and Specifications

The *Contractor* will comply with all requirements in, and undertake the *WUC* in accordance with, the drawings and specifications listed in Schedule A.

# 31. Design Obligations

If the *WUC* includes design, the design provisions set out at Annexure Part C will apply to this *Contract*. If the *WUC* does not include design, the provisions at Annexure Part C will not apply to this *Contract*.

# 32. Work Health and Safety

For the purposes of the *WH&S Legislation*, the *Principal*:

(a) appoints the *Contractor* as ‘principal contractor’ and the *Contractor* accepts that appointment for executing the *WUC*;

(b) authorises the *Contractor* to exercise such authority of the *Principal* as is necessary to enable the *Contractor* to discharge the responsibilities imposed on a principal contractor pursuant to the *WH&S Legislation*; and

(c) authorises the *Contractor* to exclude any person from the *site* who does not comply with its reasonable and proper requirements and/or directions necessary to enable the *Contractor* to discharge the responsibilities imposed on the *Contractor* pursuant to the *WH&S Legislation* for the purposes of executing the *WUC*, including any sub-contractors that may be engaged directly by the *Contractor*.

The *Contractor* acknowledges that its acts or omissions may affect the ability of the *Principal* to comply with duties and obligations arising under the *WH&S Legislation*. The *Contractor* shall ensure so far as is practicable that it does not by its acts or omissions cause or contribute to any breach by the *Principal* of any provisions of the *WH&S Legislation* and shall take all steps as are practicable to assist the *Principal* in complying with the provisions of the *WH&S Legislation*. The *Contractor* shall indemnify the *Principal* to the extent permitted by law in respect of any liability, costs, losses or expenses whatsoever arising in connection with any breach of the *WH&S Legislation* by the *Principal* to which the *Contractor* has contributed by a breach of this clause. The indemnity given under this paragraph does not restrict or alter and is not restricted or altered by any indemnity given elsewhere under this Contract. The *Contractor* shall otherwise comply with all of its duties and obligations under the *WH&S Legislation*.

# 33. Modern Slavery

The Contractor must:

1. if any Modern Slavery Legislation is applicable to the Contractor, comply with such legislation;
2. in any event, facilitate the Principal complying with any of the Modern Slavery Legislation applicable to the Principal, by reporting in a timely manner and providing all information concerning the Contractor’s supply chain and that of its subcontractors and suppliers which the Principal or the Superintendent may acting reasonably require, such reporting and other information being provided no later than 60 days after expiry of the period to which the reporting relates to, or earlier where required in order for the Principal to meet its obligations under the applicable Modern Slavery Legislation; and
3. ensure that such reporting and other information is accurate, complete and in such form as the Principal or Superintendent in their discretion requires.

# 34. Miscellaneous

**33.1 Counterparts**

The *Contract* may be executed in a number of counterparts.

If each party has been given a duly executed counterpart of the *Contract*, the counterparts taken together constitute one and the same instrument.

**33.2 Entire Agreement**

The *Contract* constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior representations, negotiations, arrangements and understandings of the parties in connection with it.

Each party acknowledges and agrees that it has not entered into the *Contract* relying on any representations made by or on behalf of any of the other(s), other than those expressly set out in the *Contract*.

# 34. Provisional Sum

**34.1 When Payable**

A *Provisional Sum* shall only become payable to the *Contractor* if the *Superintendent* instructs the *Contractor* to proceed with the works the subject of the *Provisional Sum* and then only subject to and in accordance with this clause 34.

**34.2 Valuation**

Where the *Superintendent* directs the *Contractor* to undertake work the subject of a *Provisional Sum*, if undertaken by the *Contractor* the work shall be valued by the *Superintendent.*

**34.3 Time**

The *Contractor* agrees that the contract period contains an adequate allowance of time to undertake work the subject of a *Provisional Sum*.

**34.4 Payment**

The *Contract Sum* shall be adjusted by the *Superintendent* to take account of any difference between a *Provisional Sum* and the cost of performance of the work the subject of a *Provisional Sum* by increasing or decreasing the *Contract Sum* as the case may be. The *Contractor* shall not be entitled to a margin or a percentage for profit and overhead on the *Provisional Sum* or, if the cost of performance of the work the subject of a *Provisional Sum* exceeds the *Provisional Sum*, that excess amount.

Part C

**Annexure to the Australian Standard**

**Minor works contract conditions (Superintendent administered)**

**AS 4905–2002**

**Design Obligations**

* 1. Design process
     1. Preparation and Submission of Design Documents

The *Contractor* shall in undertaking and completing any design for the *Works* prepare such documents as are necessary or desirable to carry out the *Works*. The *Contractor* shall provide copies of the *Design* *Documents* to the *Superintendent* as soon as reasonably practicable after their preparation and in any event 14 days prior to the intended date or time when construction of that part of the *Works* is to be commenced.

* + 1. Disapproval of Design Documents

If the *Superintendent* notifies the *Contractor* of its disapproval of any Design Documents within 10 days after receipt, the *Contractor* shall revise the Design Documents and submit revised Design Documents to the Superintendent.

*Design* *Documents* shall not be issued by the *Contractor* for construction if rejected by the *Superintendent* under this clause 1.2.

* + 1. No Contract Sum adjusted due to Disapprovals

The *Contractor* shall not be entitled to:

* + - 1. an adjustment to the *contract sum*; or
      2. any adjustment to the *date for practical completion*;

for any change or revision due to any rejection by the *Superintendent* under clause 1.2 if the *Superintendent* is of the reasonable opinion that such change or revision was necessary as a result of any error or failure of the *Design* *Documents* to comply with the requirements of the *Contract* or any reasonable requirements of the *Principal* previously notified in writing to the *Contractor*.

* + 1. Effect of Approval

An approval of *Design* *Documents* or an authorisation to proceed with construction under this clause or any other provision of the *Contract* by the *Superintendent* shall not amount to an acceptance that the *Design* *Documents* comply with the *Contract* and shall be construed as an authorisation to proceed with construction only.

Once approval of *Design* *Documents* is given or deemed to have occurred the *Contractor* shall not vary that part of *the Works* without the prior approval of the *Superintendent* which shall not be unreasonably withheld.

* + 1. Design warranties

The *Contractor* accepts the design of *the Works* as far as it is complete at the date of this *Contract* and the *Contractor* warrants to the *Principal*:

* + - 1. that the design when complete will:
         1. be to the standard expected of a specialist consultant providing design services in Australia of a similar nature in respect of projects comparable to *the Works*; and
         2. be such that *the Works*, when constructed, are functional, fit for their intended purpose and comply with the intent of the *Contract* documents;
      2. that it has examined and carefully checked any preliminary design provided to the *Contractor* by the *Principal* and that such preliminary design is suitable, appropriate and adequate for *the Works*.
    1. Design warranties not affected

The *Contractor* acknowledges that the warranties in clause 1.5 shall remain unaffected notwithstanding:

* + - 1. that design work has been carried out by or on behalf of the *Principal* and provided to the *Contractor*;
      2. any receipt or review of, or comment or direction on, the *Design* *Documents* by the *Superintendent*; and
      3. any variation under clause 22 of the *Contract*.
  1. Intellectual Property
     1. Warranties and Indemnities

The *Contractor* warrants that unless otherwise provided in the *Contract*, the *Contractor* owns the copyright in those of the Design Documents provided by the *Contractor*. The *Contractor* shall indemnify the *Principal* against any design, materials, documents and methods of working provided by the *Contractor* infringing any patent, copyright, registered design, trademark or name, or other protected right.

* + 1. Intellectual property rights granted to *Principal*

The *Contractor* grants to the *Principal* a perpetual irrevocable royalty-free licence to use the *Design Documents* for the work under the *Contract*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, *the Works.*

* + 1. Moral Rights

The *Contractor* warrants that:

* + - 1. it will obtain or has obtained from each of its employees involved in making, developing or creating the project all copyright or an irrevocable licence capable of sub-licensing in any documents prepared for *the* *Works*; and
      2. written consent for the benefit of the *Principal* in relation to any and all acts or omissions in respect of any work made, created or developed as part of any of *the Works*.
    1. Copyright indemnity

The *Contractor* indemnifies and will keep indemnified the *Principal* for any loss, damage, expense or liability the *Principal* may suffer which is caused by or is related to:

* + - 1. a breach of this clause 2 by the *Contractor*; and
      2. any employee of the *Contractor* or employee of any subcontractor of the *Contractor* attempting to otherwise enforce their Moral Rights pursuant to the *Copyright Act* 1968.
    1. Definitions

In this clause 2:

**Moral** **Right** has the meaning given to it by section 189 of the *Copyright Act* 1968.

**Work** has the meaning given to it by section 189 of the *Copyright Act* 1968.

* + 1. Warranty as to rights

The *Contractor* warrants that it is entitled to provide to the *Principal* the rights granted to the *Principal* pursuant to this clause 2.

* 1. Professional Indemnity Insurance
     + 1. Before the *Contractor* commences *WUC*, the *Contractor* shall effect a professional indemnity insurance policy with a total aggregate cover of not less than $1,000,000.00 (one million dollars).
       2. The policy and such level of cover shall be maintained for the period from the commencement of the *WUC* until 6 years after the *date* *of* *practical* *completion*.

**Annexure to the Australian Standard**

**Minor works contract conditions (Superintendent administered)**

**AS 4905–2002**

Schedule A: Table of Drawings and Specifications

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Document Name** | **Drawing No.** | **Rev** | **Prepared By** | **Date** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Annexure to the Australian Standard**

**Minor works contract conditions (Superintendent administered)**

**AS 4905–2002**

Schedule B: Form Of Contractor’s Statutory Declaration for   
Australian Capital Territory, Queensland and Victoria

I, [name of person] of [address], [occupation] do solemnly and sincerely declare as follows:

1. I am [state person's position in the contractor's company eg, Director, Company Secretary, Contract Administrator etc] for the time being of [name of contractor] (**Contractor**) and am authorised to make this declaration on behalf of the Contractor.
2. The Contractor has entered into a building contract with Australian Catholic University Limited (**Principal**) dated [insert date of contract] in relation to the project at [insert] (**Contract**).
3. I am making this statutory declaration in connection with the payment of Progress Claim No. [insert Claim number] dated [insert date] pursuant to the Contract.
4. As at [date], all monies due and payable by the Principal in relation to the Contract have been paid in full.
5. All insurance policies required to be effected by the Contractor pursuant to the Contract are current.
6. The Contractor holds all licences required for the Contractor to carry out the works under the Contract and those licences are in full force and effect as at the date of this declaration.
7. Except as stated below, all of the Contractor's workers and sub-contractors (including consultants and any other suppliers of services, plant, equipment, materials and other goods), who at any time have been engaged on work under the Contract have at the date of this declaration been paid in full all monies due and owing to them in respect of invoices rendered up until, and forming part of, the previous progress claim under the Contract, excluding any cash retentions. The following amounts have been claimed, but have not yet been paid, for the following reasons:

[Insert name and amounts claimed but unpaid and the reasons for the non payment]

1. Except as stated below, there are currently no actual or threatened disputes of a material nature in relation to any payment to any employee, subcontractor, consultant or supplier of materials in respect of the works being carried out pursuant to the Contract or which are or may become subject to any action or claim by any person under the building and security of payments legislation applicable to the site of the works*,* or any similar legislation.

The following amounts have been claimed, but have not yet been paid, for the following reasons:

[Insert name and amounts claimed but unpaid and the reasons for the non payment]

**AND I ACKNOWLEDGE** that this declaration is true and correct, and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

|  |  |
| --- | --- |
| Declared at [Town or Suburb] in the State of Australian Capital Territory/Queensland/Victoria this [Day] day of [Month] [Year]  Before me:  Name of Witness: [Name]  Title: [eg Justice of the Peace] | Declarant |

**Annexure to the Australian Standard**

**Minor works contract conditions (Superintendent administered)**

**AS 4905–2002**

Schedule B: Form of Contractor’s Statement for New South Wales

**STATEMENT REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION**

**NOTE - For the purpose of this Written Statement: the “subcontractor” is the *Contractor* and the “principal contractor” is the *Principal* under the *Contract***

For the purposes of this Statement a “subcontractor” is a person (or other legal entity) that has entered into a contract with a “principal contractor” to carry out work.

This Statement must be signed by a “subcontractor” (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the “subcontractor” has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). This signed Statement is to be submitted to the relevant

principal contractor.

Sub Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ABN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Business name)*

of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Address of subcontractor)*

has entered into a contract with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ABN: (Note 2)

*(Business name of principal contractor)*

Contract number/identifier (Note 3)

This Statement applies for work between:……./……./……. and ……./……./……. inclusive, (Note 4)

subject of the payment claim dated: ……./……./……. (Note 5)

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a Director of/a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor’s Statement and declare the following to the best of my knowledge and belief:

a. The abovementioned Subcontractor has either employed or engaged workers or

subcontractors during the above period of this contract. Tick [ ] if true and comply with

(b) to (g) below, as applicable. If it is not the case that workers or subcontractors are

involved or you are an exempt employer for workers compensation purposes tick [ ]

and only complete (f) and (g) below. You must tick one box. (Note 6)

b. All workers compensation insurance premiums payable by the Subcontractor in respect of

the work done under the contract have been paid. The Certificate of Currency for that

insurance is attached and is dated ……./……./……. (Note 7)

c. All remuneration payable to relevant employees for work under the contract for the above

period has been paid. (Note 8)

d. Where the Subcontractor is required to be registered as an employer under the

*Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees

who performed work under the contract, as required at the date of this Subcontractor’s

Statement. (Note 9)

e. Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written

Subcontractor’s Statement by its subcontractor(s) in connection with that work for the

period stated above. (Note 10)

Additional Principal requirement as per Principal’s Conditions of Contract

All subcontractors, suppliers and consultants to the Subcontractor have been paid all money due and payable to them for the performance of work under the contract and the supply of materials for use in work under the contract

a. Signature……………………………………………Full name……………………………………….

b. Position/Title……………………………………………………………………..Date……./……./……

*NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.*

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called *the subcontractor*) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor’s business.

2. For the purpose of this Subcontractor’s Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration as ‘*remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*’

Section 127(11) of the *Industrial Relations Act 1996* states ‘*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*’

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontract’s Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor’s Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor’s Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business ‘in turn’ engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor’s Statement from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor’s Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

(a) the person is the subcontractor;

(b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or

(c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, please visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**Annexure to the Australian Standard**

**Minor works contract conditions (Superintendent administered)**

**AS 4905–2002**

Schedule C: Programme of Works

**Annexure to the Australian Standard**

**Minor works contract conditions (Superintendent administered)**

**AS 4905–2002**

Schedule D: Copies of Drawings and Specification