

INSTRUMENT OF AGREEMENT

This *Contract* is made this day of 2020

Between

The Commonwealth of Australia as represented by the High Court of Australia (ABN 69 455 188 986) (**Principal**)

Parkes Place, Parkes ACT 2600

; and

[Insert *Contractor's* Name and ABN/ACN] (**Contractor**)

Background

- A. The Principal wishes to enter into this Contract with the Contractor to construct the Works.
- B. The Principal is relying on the Contractor to possess the necessary knowledge, skill and expertise to construct the Works.
- C. The Contractor has agreed to construct the Works in accordance with the Contract.

Operative Provisions

In consideration of the mutual promises contained in this document, the parties to this Instrument of Agreement agree as follows:

1. Definitions and Interpretation

- 1.1. Unless the context otherwise requires, terms defined in the Minor Works Contract Conditions (as amended) have the same meaning in this Instrument of Agreement.
- 1.2. In the *Contract*, unless the contrary intention appears:
 - a. words in the singular include the plural and words in the plural include the singular;
 - b. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - c. words importing a person include a partnership and a body whether corporate or otherwise;

- d. a reference to dollars is a reference to Australian dollars;
- e. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- f. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- g. the Schedules to this Instrument of Agreement and any schedules, annexures or attachments form part of the *Contract*;
- h. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- i. wherever the context permits, a reference to a party includes that party's respective successors in title or assignees; and
- j. a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally.

1.3. As far as possible, all provisions of the *Contract* will be construed so as not to be void or otherwise unenforceable.

1.4. If anything in the *Contract* is void or otherwise unenforceable, then it will be severed and the rest of the *Contract* remains in force.

1.5. In the interpretation of the *Contract*, no rules of construction apply to the disadvantage of any party on the basis that it put forward the *Contract*.

2. The Contract

2.1. The following documents are deemed to constitute the *Contract*:

- a. this Instrument of Agreement
- b. AS 4906-2002 Minor works contract conditions (Principal administered);
- c. Annexure Part A;
- d. Annexure Part B;
- e. Schedule 1 – Drawings and Specifications

(together the *Contract Documents*).

2.2. If there is any ambiguity, discrepancy or inconsistency between the *Contract Documents*:

- a. the *Contractor* must promptly advise the *Principal* in writing of the ambiguity, discrepancy or inconsistency; and
- b. the *Principal* will direct the *Contractor* as to the interpretation and construction to be followed.

2.3. This *Contract* shall be governed by and construed in accordance with all legislative requirements for the time applying in the Australian Capital Territory, provided that nothing in the *Contract* will be construed as removing or altering any immunities of the *Principal* or subjecting it to legislative requirements which would otherwise not apply to it of their own force.

3. Contract sum

3.1. In consideration of the agreements set forth in the *Contract Documents*:-

- a. the *Contractor* will execute the Works in conformity in all respects with the *Contract Documents* and will perform fulfil comply with submit to and observe all and singular the provisions conditions stipulations and requirements and all matters and things expressed or shown in or reasonably to be inferred from the *Contract Documents* and which are to be performed fulfilled complied with submitted to or observed by or on the part of the *Contractor*; and
- b. the *Principal* will pay to the *Contractor* the lump sum of \$[XXXXXXXXXX].
(Any rates included in this *Contract* are included to value variations only.)

4. Commencement

- 4.1. The terms of the *Contract* apply on and from the *Date of the Contract*.
- 4.2. The parties agree that the *Contract* applies whether the *WUC* was undertaken prior to, on or after the *Date of the Contract*.

5. Obligations of the Parties

5.1. In consideration of the *Principal* entering into the *Contract*, the *Contractor* will perform the *WUC* in conformity in all respects with the *Contract Documents* (including the Drawings and Specifications in Schedule 1).

5.2. The *Contractor*:

- a. must act with the highest levels of integrity in the performance of the *WUC* and in the interests of the *Principal* and must not engage in misleading or deceptive conduct or act in the interests of third parties other than the *Principal*;
- b. will be solely responsible for the management, supply, installation, completion and commissioning of the *Works* in accordance with the provisions of this *Contract*; and

- c. is responsible for:
 - i. the collection (from the location nominated by the *Principal*), insurance, transport and installation of any materials supplied by the *Principal*;
 - ii. all other activities necessary for the completion of *the Works* including, without limitation, the engagement, supervision, control, coordination and direction of all *subcontractors* and other resources and the supply of all necessary machinery and plant and *equipment* and administrative requirements; and
 - iii. if this *Contract* is the consequence of a tender, complying with all representations made in the *Contractor's tender* – except to the extent they are inconsistent with the express provisions of the *Contract*.

5.3. Without limiting its obligations under clause 5.1 and clause 5.2 of this *Instrument of Agreement*, the *Contractor* will carry out all items of *work* reasonably to be inferred for the proper execution and completion of *the Works* and for the proper performance by the *Contractor* of its obligations under the *Contract* in a *proper and workmanlike manner*, whether or not those items have been shown or described in any of the *Contract Documents*.

5.4. The *Contractor* warrants that the completed *Works* will be fit for the purpose detailed in or reasonably inferred from the Drawings and Specifications.

6. Costs

6.1. Each party will bear its own costs and expenses (including legal costs) arising out of and incidental to the negotiation, preparation, execution and delivery of the *Contract*.

7. Entire agreement

7.1. The *Contract* contains the entire agreement of the parties with respect to the parties' rights and obligations under the *Contract* and, except to the extent stated in the *Contract*, supersedes all prior understandings and representations between the parties with respect to the parties' rights and obligations under the *Contract*.

7.2. Each party will take such steps, execute all such documents and do all such acts and things as may be reasonably required by any other party to give effect to any of the transactions contemplated by the *Contract*.

8. Counterparts

8.1. This *Instrument of Agreement* may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument.

9. Variation

- 9.1. The provisions of the *Contract* will not be varied either in law or in equity except by agreement in writing signed by the parties.
- 9.2. The *WUC* may be varied by the procedures for variation set out in the *Contract*.

10. Applicable law

- 10.1. The *Contract* is to be construed in accordance with, and any matter related to it is to be governed by the laws of the jurisdiction where the *WUC* is carried out.
- 10.2. The parties submit to the non-exclusive jurisdiction of the courts of the jurisdiction where the *WUC* is carried out.

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Executed as an agreement

Signed for and on behalf of the Commonwealth of Australia as represented by the High Court of Australia (ABN 69 445 188 986) by its duly authorised representative:

Name of signatory (please print)

Signature

in the presence of:

Name of witness (please print)

Signature of witness

Executed by [insert name of Contractor] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Name of director (please print)

Signature of director

Name of director/secretary (please print)

Signature of director/secretary

Part A

Annexure to the Australian Standard Minor works contract conditions (Principal administered) AS 4906-2002

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*.

Item

- | | | |
|---|---|---|
| 1 | <i>Principal</i> (clause 1) | Commonwealth of Australia as represented by the High Court of Australia ABN 69 445 188 986 <i>Principal's</i> representative: Paul HULFORD Note that the above person is responsible for managing the project on behalf of the <i>Principal</i> , and is appointed to exercise delegated <i>Principal's</i> functions. |
| 2 | <i>Principal's</i> address | Parkes Place, Parkes, ACT, 2600 (PO Box 6309, Kingston, ACT 2604 Phone: 02 6270 6851 |
| 3 | <i>Contractor</i> (clause 1) | [TBA] ACN/ABN [TBA] |
| 4 | <i>Contractor's</i> address | [TBA] Phone: [TBA] Fax: [TBA] |
| 5 | a) <i>Date for practical completion</i> (clause 1) | [TBA] day of [TBA] 20 [xx] |

OR

- b) Period of time for *practical completion* (clause 1) [TBA] days* / weeks* after *date of acceptance of tender*
[delete which option is not applicable]
- 6 Contractor's security
- a) Form (clause 3) [TBA] Retention moneys / Bank Guarantee [delete which option is not applicable]
- b) Amount or maximum percentage of *contract sum* (clause 3) \$[TBA] OR [TBA] % of the *contract sum* [delete which option is not applicable]
If nothing stated, 5% of the *contract sum*
- c) If retention moneys, percentage of each payment certificate (clause 3) [TBA] %, until the limit in *Item 6(b)*
If nothing stated, 10%, until the limit in *Item 6(b)*
- d) Time for provision (except for retention moneys) (clause 3) Within [TBA] days after *date of acceptance of tender*
If nothing stated, 28 days
- 7 Amount of limit of indemnity for damage to other property of the *Principal* \$ [TBA]
If nothing stated, the amount of public liability insurance cover in *Item 9*.
- 8 The amount of contract works insurance cover (clause 11) \$ [TBA]
If nothing stated, the *contract sum* plus 20%
- 9 The amount of public liability insurance cover in respect of any one occurrence shall not be less than (clause 12) \$ [TBA]
If nothing stated, \$20,000,000.
- 10 The time for giving possession of the *site* to the *Contractor* (clause 17) within [TBA] days after *date of acceptance of tender*
If nothing stated, 14 days

- 11 Liquidated damages
(sub clause 20.5)
- a) Rate \$[TBA] per day
- b) Limit \$[TBA] OR [TBA] % of the *contract sum*
- If nothing stated, there is no limit
- 12 Delay damages, rate
(sub clause 20.6) \$[TBA] per day
- If nothing stated, as assessed by the *Principal*.
- 13 *Defects liability period*
(clause 21) [TBA] weeks
- If no period stated, 26 weeks
- 14 Time for progress claims
(sub clause 23.1) On the [TBA] day of each month
- If no time stated, on the last day of each month
- 15 The rate of interest on overdue
payments (sub clause 23.4) Where the *contract sum* is less than \$1 million: The daily
General Interest Charge (GIC) rate for overdue
payments for each *day* the payment is late or 5% per
annum, whichever is the lesser
- The GIC rate is found at:
[https://www.ato.gov.au/Rates/General-interest-charge-\(GIC\)-rates/](https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/)
- Where the *contract sum* is \$1 million or greater: No interest is
payable on late payments
- 16 Arbitration
(sub clause 27.3)
- a) The person to nominate an
arbitrator The President of the Australasian Disputes Centre
- b) Rules for arbitration Rules 5–18 of the Rules of The Institute of Arbitrators
& Mediators Australia for the Conduct of Commercial
Arbitrations
- 17 *Confidential Information* of the
Contractor (clause 36) [TBA] or Nil.

Part B

Annexure to the Australian Standard Minor works contract conditions (Principal administered) AS 4906-2002

Deletions, amendments and additions

Deletions

1. The following clauses have been deleted from AS 4906-2002

- Clause 2.2 – Quantities
- Clause 10.2 – Indemnity by Principal

Amendments

2. The following definitions at clause 1 (Interpretation and construction of Contract) are amended to read as follows:-

The definition of “practical completion” is amended to read: the stage in the carrying out and completion of the WUC when:

- (a) *the Works are complete except for minor defects;*
- (b) *the Contractor has provided the Principal with approved final consolidated drawings of existing services and structures and as-built drawings in respect of the Works;*
- (c) *the Contractor has provided the Principal with approved final Operation and Maintenance Manuals in respect of the Works;*
- (d) *the Contractor has assigned and provided copies of all the warranties to the Principal of all the applicable warranties, guarantees and service agreements. This includes all warranties to be provided by subcontractors or consultants;*
- (e) *there exists no physical or legal impediment to use the Works;*
- (f) *the Contractor has ensured the Works are clean and free from refuse and rubbish, and the Principal has clear safe and unrestricted access to the Site and the premises;*

- (g) *all building services have been commissioned to the satisfaction of the Principal and all tests required by the Contract, Principal and Authorities have been satisfactorily completed and the building services are operating according to the manufacturer and other applicable standards and to the satisfaction of the Principal;*
- (h) *the Contractor has removed all temporary work and protective measures; and*
- (i) *the Contractor has provided all required training to the Principal's personnel in respect of the operation of all building services and other items.*

The definition of 'qualifying cause of delay' is amended to read:-

qualifying cause of delay means:

- a) *any act default or omission of the Principal or its consultants, agents or other contractors (not being employed by the Contractor); or*
- b) *any other cause of delay to the carrying out of the Works other than:*
 - i) *a breach or omission by the Contractor; and*
 - ii) *industrial conditions or inclement weather occurring after the date for practical completion.*

3. Clause 3.2 (Recourse) is amended to provide as follows:-

"The party having the benefit of the security shall be at liberty to call upon the security to compensate it for any loss, cost or expense arising from the other party's default or omission; or in exercise of any other right it may have to have recourse against the security, after two (2) days' notice to the other party.

If the Principal calls upon any security, the Principal may, by notice in writing directed to the Contractor, require the Contractor to provide further security in an amount equivalent to the amount called by the Principal. If the Principal serves a notice under this clause 5 on the Contractor, the Principal may, notwithstanding clause 37, withhold payment of moneys due to the Contractor until the Contractor complies with the notice."

4. Clause 7 (Legislative Requirements) is amended by adding the following clauses:-

"The Contractor must immediately notify the Principal in writing if:

- (a) *it breaches any law, or fails to comply with clause 8; or*

- (b) *it receives any certificates or other documents in connection with the Contractor's compliance or otherwise with any legislative requirement or any environmental or occupational health and safety matter in relation to the Works including any licence, consent, approval, notice, policy, procedure or practice.*

Unless otherwise provided in the Contract, the Contractor must ensure that (in the absence of any express contractual provision or law to the contrary) the Works comply with all relevant Australian Standards."

5. Clause 10.1 Indemnity by the Contractor is amended by adding the following as paragraph (c) after (b) where it first occurs:-

"(c) loss, cost or expense incurred by the Principal due to any act or omission of the Contractor or any subcontractor engaged by the Contractor."

6. Clause 11 (Insurance of the Works) is amended by adding the following Add the following two paragraphs at the end of the clause:-

"At the Principal's request, the Contractor must promptly provide a copy of the policy wording for any insurance the Contractor is required to effect and maintain under this Contract.

Any insurance the Contractor is required to effect and maintain under this Contract must be in a form acceptable to the Principal and with an insurer of good financial standing authorised to carry on business under the Insurance Act 1973 (Cth)."

7. Clause 16 (Representation) - Add a new paragraph to between the existing first and second paragraphs to read as follows:

"The Principal's representative described at Item 1 of Annexure Part A is the Principal's representative initially appointed by the Principal to exercise all functions of the Principal under the Contract.

The Principal's representative shall have-

- (a) *access to the site and the WUC; and*
- (b) *after reasonable notice to the Contractor, access to any place other than the site where work under the Contract is being carried out or materials are being prepared or stored.*

8. In clause 17 (Site), all references to 'possession' are amended to read 'non-exclusive possession'.

9. Clause 20.2 (Claim) is amended by adding to the end of the clause:

"An entitlement to an EOT will only arise where there has been a delay for at least one whole working day. Claims for part days shall not be allowed.

Notwithstanding any other provision of the Contract, if the Contractor does not give the Principal a written claim in accordance with this clause 20.2, the Contractor shall not be entitled to an EOT, and the Contractor hereby releases any claim for an EOT which is not made in accordance with this clause.

The Contractor acknowledges and agrees that it is not entitled to claim any additional cost or expense, any adjustment to the contract sum, or to claim an EOT or any claim otherwise at law, if it has failed to comply with this clauses 20.2.”

10. Cause 20.6 (Delay Damages) is amended to read as follows:

“For every day that the Contractor is entitled to an EOT and that extension is due to any act or default of the Principal or its consultants or other contractors of the Principal for which the Contractor gives the Principal a claim for damages, damages in accordance with Item 12 shall be due and payable to the Contractor

Delay damages shall be limited to the Contractor's actual verified costs reasonably and necessarily incurred as a result of the relevant delay, up to the maximum amount per working day as specified in Item 12. The amount specified in Item 12 is a cap on the Contractor's entitlement for loss, damage or compensation arising out of delay or disruption.”

Additions

11. Add the following definitions to clause 1 (Interpretation and construction of Contract):

Authority

means any Commonwealth, State, Territory, local or statutory authority, body or other organisation having jurisdiction over the site or the Works.

Confidential Information

means information that is by its nature confidential but does not includes information which is or becomes public knowledge other than by a breach of Contract. Any Confidential Information of the Contractor is described in Item 17 of Annexure Part A.

Contractor WHS Requirements

means

- a) compliance with all WHS Laws;*
- b) co-operating with the Principal in its performance of work health and safety obligations under WHS Laws or the Principal's work health and safety arrangements, including participating in any consultation, representation or participation required of or by the Principal;*
- c) compliance with any work health and safety directions, programs, requirements or arrangements implemented by the Principal and notified to the Contractor;*
- d) compliance with all the Contractor's obligations under the Contract dealing with or relevant to work health and safety;*

- e) performing the WUC in a way which will ensure that nothing is done or omitted to be done in the performance of the WUC or on the site or the Principal's premises which would result in the Principal failing to comply with its obligations under WHS Laws; and
- f) notifying the Principal immediately of any circumstance which may or does give rise to a work health and safety risk or a failure by the Contractor or the Principal to comply with WHS Laws.

Date of the Contract

means the date set out in the Instrument of Agreement.

GST Act

means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Instrument of Agreement

means the instrument of agreement between the Principal and the Contractor which is attached to and forms part of this Contract.

legislative requirement

includes:

- a) Acts, Ordinances, regulations, by-laws, orders, awards, proclamations and codes (including the Building Code 2013 and any code of practice authorised under the Work Health and Safety Act 2011 (Cth)) whether federal or of the jurisdiction where WUC or the particular part thereof is being carried out;
- b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of WUC; and
- c) fees and charges payable in connection with the foregoing.

Security of Payment Legislation

means the Building and Construction Industry (Security of Payment) Act 2009 (ACT) or any amendment or replacement of the same.

separable portions

means a portion of the Works identified as such in the Contract or directed by the Principal'

WHS Authority

means the authority of the Commonwealth of Australia and the Australian Capital Territory responsible for administering WHS Laws.

WHS Laws

means all statutes, regulations, statutory

instruments, subordinated legislation, codes of practice and standards (including those of the Commonwealth of Australia and of the Australian Capital Territory dealing with or relevant to health and safety in workplaces and of workers and others who may be affected by the carrying out of work, and includes any approvals, permits, licences, directions or requirements of a WHS Authority.

12. Add new clause 28 as follows:

"28. Work Health and Safety

28.1 Works health and safety obligations

In performing the WUC, and without limiting any other obligation, the Contractor agrees:

- (a) that it must comply with all Contractor WHS Requirements;*
- (b) to provide promptly on request such information, consultation, co-operation and co-ordination as is reasonably required by the Principal to comply with the Principal's obligations under legislative requirements including all WHS Laws applicable from time to time; and*
- (c) that compliance with any requirement or direction of the Principal relating to work health and safety does not relieve the Contractor of its obligation to comply with any other Contractor WHS Requirements and to perform the WUC in accordance with this Contract.*

The Contractor must comply with all the duties and obligations imposed on a 'principal contractor' under the WHS Law even if the contract sum is less than \$250,000, including but not limited to:

- (a) complying with its health and safety duties in relation to all WUC;*
- (b) complying with the consultation, representation and participation requirements, including any consultation required with designers and manufacturers;*
- (c) preparing safe work method statements for high risk construction work and ensuring that the high risk construction work is carried out in accordance with the safe work method statements;*
- (d) complying with all relevant codes of practice approved under the WHS Law;*
- (e) immediately notifying the Principal of any 'notifiable incident' as defined in the WHS Law;*
- (f) permitting work health and safety entry permit holders entry to the site; and*
- (g) not permitting any act or omission that causes or may cause the Principal or the Contractor to not comply with the WHS Law.*

The Contractor further agrees to comply with any reasonable direction or requirement of the Principal in relation to work health and safety in relation to the WUC and acknowledges that such direction shall not relieve the Contractor of its obligation to carry out the Works in accordance with the Contract or entitle the Contractor to an extension of time or any delay or disruption costs.

28.2 Work Health and Safety Plan

If required under the WHS Law, the Contractor must prepare a WHS management plan, safe work method statement and any other WHS-related documentation submitted by the Contractor to the Principal as part of the Contractor's tender for the Works (as well as the final version of those documents).

The Contractor must ensure that any work health and safety plan, safe method work statement or similar documents, comply with the requirements of the WHS Law and all other legislative requirements.

The Contractor must, in particular, comply with:

- (a) Chapter 6 of the Work Health and Safety Regulations 2011 (Cth); and
- (b) all relevant codes of practice relating to the carrying out of the WUC.

The work health and safety plan must address all matters relating to the regulation and implementation of safe work practices on the site, including but not limited to site induction, recording and reporting of accidents and incidents and the protection of other users of the Works and its surroundings.

The Contractor warrants that the work health and safety plan will be maintained and updated to include the requirements in this clause 28.2.

28.3 Failure to comply is a substantial breach

Without limiting any of the Principal's rights under the Contract, a failure by the Contractor to comply with its obligations under this clause 28 is a substantial breach of the Contract under clause 25.2."

13. Add new clause 29 as follows:

"29. Transparency and accountability requirements

The Principal may be subject to certain transparency and accountability requirements.

The Contractor acknowledges that these may include:

- (a) an obligation on or a discretion of the Principal to publish on the internet details of certain contracts, such details to include the name of the contractor, the subject matter of the contract and whether the contract contains any provisions requiring the parties to maintain confidentiality and the reasons for those provisions;
- (b) a public right of access to official documents of the Principal under the Freedom of Information Act 1982 (Cth) subject to certain exemptions;
- (c) the protection of personal information under the Privacy Act 1988 (Cth);

(d) providing information and evidence to Senate Committees, Ministers and other government officials.

The Contractor is deemed to have familiarised itself with these requirements.

14. Add new clause 30 as follows:

“30. GST

In this clause 30, where a term or word is used which is defined in the GST Act, it has the meaning which it has in the GST Act.

Unless otherwise indicated, all consideration for any supply made under the Contract is exclusive of any GST imposed on the supply.

*Subject to this clause 30, if one party (**Supplier**) makes a taxable supply under the Contract to the other party (**Recipient**), the Recipient on receipt of a tax invoice from the Supplier shall pay without setoff an additional amount to the Supplier equal to the GST imposed on the supply in question.*

No party may claim or retain from the other party any amount in relation to a supply made under the Contract for which the first party can obtain an input tax credit or decreasing adjustment.

If, at any time, an adjustment is made between a party and the relevant taxing authority of an amount paid on account of GST on any supply made under the Contract, a corresponding adjustment shall be made as between the Contractor and the Principal and any payments required to give effect to the adjustment shall be made.

Nothing in this clause requires a party to pay any amount on account of a fine, penalty, interest or other amount for which the other party is liable, to the extent that the liability arises as a consequence of a default of that other party.”

15. Add new clause 32 as follows:

“32. Compliance with Legislative Requirements

The Contractor agrees that, in carrying out the WUC, it will comply with all relevant legislative requirements of the Commonwealth and of any State, Territory or local Authority having jurisdiction over the Works including:

- (a) *the National Construction Code 2019 incorporating the Building Code of Australia;*
- (b) *the Crimes Act 1914 (Cth);*
- (c) *the Disability Discrimination Act 1992 (Cth) and the Disability Standards;*
- (d) *the Migration Act 1958 (Cth);*
- (e) *the Privacy Act 1988 (Cth);*
- (f) *the Racial Discrimination Act 1975 (Cth);*
- (g) *the Sex Discrimination Act 1984 (Cth);*
- (h) *the Work Health and Safety Act 2011 (Cth);*

- (i) *the Competition and Consumer Act 2010 (Cth);*
- (j) *the Building and Construction Industry (Improving Productivity) Act 2016 (Cth); and*
- (k) *the Modern Slavery Act 2018 (Cth).*

The Contractor must immediately give written notice to the Principal if the requirements of the WUC conflict with any applicable legislative requirements.”

16. Add new clause 33 as follows:

“33 Privacy

In this clause 33, Australian Privacy Principle has the same meaning as it has in the Privacy Act 1988 (Cth).

The Contractor agrees, in carrying out the WUC, not to do any act or engage in any practice which, if done or engaged in by the Principal, would be a breach of an Australian Privacy Principle.

The Contractor agrees to notify the Principal immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 34.”

17. Add new clause 34 as follows:

“34 Confidential Information

Subject to paragraph (a) below, a party will not, without the prior written authorisation of the other party, disclose any Confidential Information to a third party.

(a) *The obligations of the Principal under this clause 34 will not be taken to have been breached to the extent that Confidential Information:*

- i. *is disclosed by the Principal to its personnel solely in order to comply with its obligations, or to exercise its rights, under this Contract;*
- ii. *is disclosed to the Principal’s internal management personnel, solely to enable effective management or auditing of Contract-related activities;*
- iii. *is disclosed by the Principal to other emanations of the Commonwealth for the proper purposes of the Commonwealth;*
- iv. *is authorised or required by law to be disclosed; or*
- v. *is in the public domain otherwise than due to a breach of this clause 34.*

Where the Principal discloses Confidential Information to another person pursuant to clauses 34(a)(i) to 34(a)(iv), the Principal will notify the receiving person that the information is confidential.

In the circumstances referred to in clause 34(a)(iii), the Principal agrees not to provide the information unless the receiving person agrees to keep the information confidential.

The obligations under this clause 34 in relation to an item of Contractor's Confidential Information described in Item 17 of Annexure Part A continue for the period set out there in respect of that Item."

18. Add new clause 35 as follows:

"35 Security of Payment Legislation

The Contractor agrees with the Principal that:

- (a) *To the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the "reference dates" are those of the dates prescribed in clause 23.1.*
- (b) *A reference to a "progress certificate" is also a reference to a "payment schedule" for the purposes of the relevant Security of Payment Legislation.*
- (c) *To the extent permitted by the Security of Payment Legislation, failure by the Principal to set out in a progress certificate issued under the relevant Security of Payment Legislation or otherwise an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice:
 - i. *the Principal's ability or power to set out in a subsequent payment certificate an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal; or*
 - ii. *the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.**
- (d) *The Contractor agrees that the amount set out in the progress certificate in accordance with clause 23.2 is, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the "progress payment" calculated in accordance with the terms of this Contract, which the Contractor is entitled to in respect of the Contract."*

19. Add new clause 36 as follows:

"36 Separable Portions

Separable portions may be detailed in the Contract or directed by the Principal's Representative who shall identify for each:-

- (a) *the portion of the Works;*
- (b) *Site of the Works*
- (c) *the date for practical completion; and*
- (d) *respective amounts for security, liquidated damages and delay damages."*

Schedule 1

Drawings and Specifications

The Drawings and Specifications are as set out in the Electrical Switchboard Replacement Works electrical specification report by Steensen Varming (Level 8, Castlereagh Street, Sydney, NSW, 2000) dated 3 June 2019 and here appended..

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Schedule 2

Rates and Prices for the purposes of clause 22.2

These rates are inclusive of all costs and charges including all relevant direct costs, margins, on-costs and profit

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