**HAC Project Bank Account Pack**

**ANNEXURE B**

**Project Bank Account Agreement**

|  |  |  |
| --- | --- | --- |
|  |  | |
| PBA agreement  [Name of Contractor] (Contractor)  [ABN/ACN] [number]  *[Insert actual legal name of the Contractor (not trading name) and ACN or ABN of the Contractor above]*  and  [Name of Bank] (Bank)  [ABN/ACN] [number]  *[Insert name and ACN or ABN of Bank above]*  Housing Authority(Principal) | | |
| Project Bank Account in respect of [Project]. Contract No. [insert] *[Insert name of Project and contract number above]* | |  |
| [INSERT YEAR] | | |

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**THIS DEED** is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*[The Principal will insert the date this document is signed]*

BETWEEN:

1. [Name of Contractor] [ABN/ACN] [number] whose registered office is at [address] (the **Contractor**);  
   *[Insert actual legal name of the Contractor and ACN or ABN of the Contractor above]*
2. [Name of Bank] [ABN/ACN] [number] whose registered office is at [address] (the **Bank**); and  
   *[Insert name and ACN or ABN of Bank above]*
3. **Housing Authority** being a body corporate continued pursuant to s.6 of the *Housing Act 1980* (WA) (the **Principal**).

RECITALS:

1. The Principal and the Contractor have entered into the Contract for the carrying out and completion of the Project.
2. Subcontractors have been and will be engaged to carry out and complete parts of the Project.
3. Under the PBA Trust Deed Poll, the Contractor has agreed that all moneys standing to the credit of the Accounts are held on trust for each of the Contractor and the Subcontractors in the amounts identified against their respective names in the Payment Instruction issued in relation to funds that are deposited into the Accounts.
4. This document outlines the terms and conditions on which the Bank has agreed to disburse amounts that are deposited in the Accounts.
5. The Principal is a party to this document to obtain the benefit of rights and acknowledgement of benefits granted to it under (or by virtue of being a party to) this document and agrees to be bound as contemplated by this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION
   1. Definitions

The following definitions apply in this document.

ABA File Format means the format referred to as "Australian Bankers’ Association direct entry file format".

Accounts means trust accounts with the number:

* 1. *[BSB number] [account number]* titled '*[insert Contractor and Project name]* – General PBA Trust Account' (**General PBA**);and
  2. *[BSB number] [account number]* titled '*[insert Contractor and Project name]* – Retention PBA Account' (**Retention PBA**),

or any replacement account agreed by the parties to this document or in the absence of agreement, as nominated by the Principal.

Authorised Representative means:

* 1. in respect of the Principal and the Contractor, a person it notifies to the Bank (with a certified copy of that person's specimen signature) as being its authorised representative for the purposes of this document where the Bank has no notice of revocation of that authority; and
  2. in respect of the Bank, a person whose title or acting title includes 'manager', 'director', 'executive', 'chief', 'head', 'counsel' or 'president', or a person notified to the other parties as being its authorised representative for the purposes of this document.

Business Daymeans any day other than:

* 1. a Saturday or a Sunday; or
  2. a gazetted holiday in Perth, Western Australia under the *Public and Bank Holidays Act 1972* (WA).

1. Contract means the contract between the Principal and the Contractor dated *[insert date of execution of the Contract or date of issue of the letter of award]* in respect of the Project.

Contractor Deposit Instruction means a payment instruction:

* 1. in ABA File Format; and
  2. which gives effect to the requirements set out in Schedule 5,

1. the purpose of which is to initiate deposits or transfers by the Contractor (in each case) from or to the General PBA.
2. Deposit Amount means those moneys deposited into and standing to the credit of the Accounts.
3. **General PBA** is defined under the definition of "Accounts"
4. Government Authoritymeans any Federal, State, local government (including any local council), and any agency, department, directorate or instrumentality thereof, including any independent regulator deriving power from statute, within Australia or elsewhere.
5. Lawmeans:
   1. Commonwealth, Western Australian and local government legislation, including statutes, ordinances, instruments, codes, requirements, regulations, by-laws and other subordinate legislation;
   2. common law; and
   3. principles of equity.
6. **Opt-in Notice** means a notice given in the form set out in the PBA Trust Deed Poll.
7. Opt-in Subcontractor means:
   1. any person that is contracted by the Contractor to:
      1. undertake work or services; or
      2. undertake work or services and supply goods or materials,

where the total aggregate value of such ‘work or services' or 'work or services and supply of goods or materials' in connection with the Project is less than $20,000 (GST inclusive); or

* 1. any person that is a Supplier in connection with the Project,

where the person has expressly stated (to the Contractor) that they wish to participate in the trust created by the PBA Trust Deed Poll.

1. Payment Instruction means a valid payment instruction in relation to the operation of the Accounts that is:
   1. authorised by the Contractor or an Authorised Representative of the Contractor acceptable to the Bank;
   2. issued by the Contractor pursuant to the PBA Trust Deed Poll, contemporaneously to the Principal and to the Bank;
   3. in the form of a:
      1. Progress Payment Instruction;
      2. Retention Release Instruction; or
      3. Contractor Deposit Instruction; and
   4. subject to clause 3.1(c), irrevocable.
2. PBA Trust Deed Poll means the document of that name executed by the Contractor and which is also executed by the Principal in connection with the Contract, on or around the date of the Contract, pursuant to which the Accounts are to be established and moneys due to the Contractor under the Contract are to be paid and held on trust.
3. PPI – Consolidated Allocation means a payment instruction, in ABA File Format, which gives effect to the requirements set out in Schedule 1.
4. PPI – Contractor Allocation means a payment instruction, in ABA File Format, which gives effect to the requirements set out in Schedule 2.
5. PPI – Retention Allocation means a payment instruction, in ABA File Format, which gives effect to the requirements set out in Schedule 4.
6. PPI – Subcontractor Allocation means a payment instruction, in ABA File Format, which gives effect to the requirements set out in Schedule 3.
7. **PPS Law** means:
   1. the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
   2. any amendment made at any time to any other legislation as a consequence of a Law or regulation referred to in paragraph (a).
8. **PPS Regulations** means the *Personal Property Securities Regulations 2010* (Cth).
9. **PPSA** means the Personal Property Securities Act 2009 (Cth).
10. Progress Payment Instruction means a PPI - Consolidated Allocation or any one or more of a:
    1. PPI - Contractor Allocation;
    2. PPI - Subcontractor Allocation; or
    3. PPI - Retention Allocation,

the purpose of which is to originate a payment by the Principal into the General PBA.

1. Project means [*insert a brief description of the Project*].
2. Retention Amountmeans any moneys which the Contractor is entitled to retain from amounts due to Subcontractors pursuant to any express provision of the relevant subcontract, permitting either a specified percentage amount or a specified amount to be retained from payments to be made under such subcontract.
3. Retention PBA is defined under the definition of "Accounts”.
4. Retention Release Instruction means a payment instruction:
   1. in ABA File Format; and
   2. which gives effect to the requirements set out in Schedule 6,
5. the purpose of which is to disburse Retention Amounts from the Retention PBA.
6. Security Interest means any:
   1. 'security interest' as defined in the PPS Law;
   2. security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
   3. thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

1. Subcontractor means:
   * 1. a person who has been contracted by the Contractor to:
        1. undertake work or services; or
        2. undertake work or services and supply goods or materials;

where in either case the total aggregate value of such ‘work or services' or 'work or services and supply of goods or materials' in connection with the Project is equal to or greater than $20,000 (GST inclusive); and

* + 1. any Opt-in Subcontractor that has signed an Opt-in Notice and given a copy of that notice to the Contractor.

To avoid doubt, a "Subcontractor" may be a Selected Subcontractor or a Nominated Subcontractor (in each case as defined in the Contract).

**Supplier** means a person who has been contracted to supply goods or materials to the Contractor in connection with the Project but who undertakes no design, fabrication, construction work or service of any kind in connection with the Project.

* 1. Interpretation

In this document, except where the context otherwise requires:

* + 1. the singular includes the plural and vice versa, and a gender includes other genders;
    2. another grammatical form of a defined word or expression has a corresponding meaning;
    3. a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to this document includes any schedule or annexure;
    4. a reference to a document or instrument includes the document or instrument as novated, altered, amended, supplemented or replaced from time to time;
    5. a reference to **A$**, **$A**, **dollar** or **$** is to Australian currency;
    6. a reference to time is to Perth, Western Australia time;
    7. a reference to a party is to a party to this document, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
    8. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
    9. a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
    10. the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;
    11. any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
    12. any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
    13. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it;
    14. a reference to "**contract**" means a legal, valid and binding agreement (whether in writing or not) and a reference to "**contracted**" means entered into a legal, valid and binding agreement (whether in writing or not); and
    15. if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.
  1. Headings

Headings are for ease of reference only and do not affect interpretation.

* 1. Payment Instructions
     1. It is acknowledged and agreed that:
        1. the information set out in the "Payment Instruction" schedules, being Schedules 1 to 6 of this document, reflect the intention of the parties and describe the operation of the trust and the intended movement of moneys between the parties to this document; and
        2. cash transfers will only be effected through the completion and electronic submission of instructions in ABA File Format.
     2. A reference in this document to:
        1. a Payment Instruction being a "Progress Payment Instruction, Contractor Deposit Instruction or Retention Release Instruction (as the case may be)"; or
        2. a Payment Instruction that complies with a schedule,

or any reference with same or similar meaning shall (for the purposes of this document) be deemed to be a reference to the Payment Instruction (of any kind) given in ABA File Format.

* + 1. Despite anything expressed to the contrary in this document, it is acknowledged and agreed that:
       1. cash transfers will only be effected through the completion and electronic submission of instructions in ABA File Format; and
       2. submission of any request in ABA File Format to the Bank, will be deemed to be compliant with Schedules 1, 2, 3, 4, 5 or 6 (as relevant) and the provisions of this document will be construed accordingly (including, to avoid doubt, clauses 5.5 and 5.6 of this document).

1. Appointment of Bank and Account ESTABLISHMENT
   * 1. The Contractor irrevocably and unconditionally appoints the Bank to hold and disburse the Deposit Amount on the terms and conditions contained in this document.
     2. Subject to this document, the Bank accepts the appointment under clause 2(a), and undertakes to perform only the duties or obligations that are expressly set out in this document.
     3. The Accounts will be set up as a trust account with the Contractor as trustee.
     4. The Contractor shall provide the Bank with:
        1. a certificate setting out the full name and address and containing the specimen signature of each Authorised Representative and each person who executes and delivers or is intended to execute and deliver a document or notice for and on behalf of the Contractor;
        2. the relevant PBA Trust Deed Poll; and
        3. such opinions, certificates and other documents which the Bank requires to undertake any know-your-customer procedures.
     5. The Accounts will have no overdraft facility and will not be capable of becoming overdrawn.
2. Deposit Amount
   1. Disbursement of Deposit Amount
      1. The Bank shall disburse amounts standing to the credit of the Accounts in accordance with this clause 3.1 only upon receipt of a valid Progress Payment Instruction, Retention Release Instruction or Contractor Deposit Instruction duly authorised by the Contractor.
      2. Upon receipt of a Payment Instruction of the type referred to in clause 3.1(a) above, the Bank shall disburse the Deposit Amount in accordance with the relevant Payment Instruction.
      3. If:
         1. any Payment Instruction is invalid due to errors (including arithmetic errors) or a failure to comply with the requirements of the Contract, the PBA Trust Deed Poll or this document; and
         2. prior to the bank acting on such Payment Instruction, the Bank receives notice of such invalidity by the Contractor and notice from the Principal that the Principal concurs or otherwise agrees with the invalidity,

then that Payment Instruction is deemed to be revoked and the Bank is not obliged to act on it.

* + 1. If any Payment Instruction issued to the Bank would overdraw the Accounts, that Payment Instruction is deemed to be revoked and the Bank is not obliged to act on it.
  1. Interest bearing account

Unless otherwise agreed in writing with the Principal, the Bank and the Contractor agree that the Deposit Amount will bear interest for the benefit of the Contractor.

1. Operation of Accounts
   1. Operation by the Principal
      1. Save where an administrator, provisional liquidator, liquidator or a person having a similar or analogous function under the Laws of any relevant jurisdiction provides a contrary direction to the Bank, the Bank acknowledges and agrees that, at any time, the Principal may by notice in writing to the Contractor and the Bank take exclusive control of the operation of the Accounts and until revocation in writing of the notice:
         1. only an Authorised Representative of the Principal may authorise withdrawals or transfers from the Accounts or the operation or closure of the Accounts; and
         2. the power of the Contractor to control the operation of the Accounts will be suspended.
      2. If the Principal exercises any right referred to in clause 4.1(a) it must do so in accordance with the PBA Trust Deed Poll.
      3. The Bank may assume that any act by the Principal under this clause 4.1 is in accordance with its rights and obligations under this document, the Contract and the PBA Trust Deed Poll.
      4. The Contractor and the Principal acknowledge and agree that the Bank may act in accordance with this clause 4.1 without conducting any further investigation of any circumstance or requiring any further consent of any other party.
   2. Operation of Accounts by Contractor

The Contractor undertakes to the Principal and the Bank that it will:

* + 1. not close, make withdrawals from or transfer funds from or otherwise operate, the Accounts other than in accordance with clause 3.1;
    2. provide the Bank with any documents and certificates reasonably requested by the Bank;
    3. not create, assume, permit or allow to exist any Security Interest over the Accounts other than the Security Interests created by the PBA Trust Deed Poll, by operation of Law, unless the Contractor first supplies to the Principal a duly executed deed of release or priority deed poll in relation to that Security Interest (in a form and substance acceptable to the Principal); and
    4. ensure that any proceeds or money withdrawn from the Accounts in breach of this document is kept separate from any other money and is held in trust for the Subcontractors in accordance with the PBA Trust Deed Poll.
  1. Principal is not responsible for the Accounts

The Contractor and the Bank acknowledge and agree that the Principal and its Authorised Representatives:

* + 1. are not responsible for the Contractor's performance of its obligations in relation to the Accounts; and
    2. have no duties in relation to the Accounts,

save that if the Principal operates the Accounts in accordance with clause 4.1 it must do so in accordance with the terms of the Contract and the PBA Trust Deed Poll.

* 1. Account fees

All bank charges applicable to the Accounts, including customary bank charges and audit charges, are to be met by the Contractor in accordance with arrangements made from time-to-time between the Bank and the Contractor. Any such arrangements shall comply with this document (including, to avoid doubt, clauses 4.2(a) and 5.2).

1. Bank undertakings
   1. Disclosure of information

On request by the Principal, the Bank must provide to the Principal the information made available to the Contractor by the Bank, relating to the Accounts. The Contractor consents to the provision of that information.

* 1. Set-off and waiver

The Bank acknowledges that other than any amounts identified in a Payment Instruction as being payable to the Contractor, the Deposit Amount is not beneficially owned by the Contractor and the Bank must not exercise any rights or powers under a Security Interest, or any right of set-off, combination of accounts or counterclaim in respect of the Accounts.

* 1. PPSA Subordination

The Bank subordinates in favour of the Subcontractor and the Contractor in their capacity as beneficiaries of the trust created by the PBA Trust Deed Poll, any Security Interest in the Accounts that the Bank holds (including any Security Interest perfected by control for the purposes of the PPSA) to the Security Interest created under the PBA Trust Deed Poll.

* 1. Termination right of the Bank

The Bank may at any time resign without assigning any reason for its resignation by giving written notice to that effect to each of the other parties to this document. Any moneys standing to the credit of the Accounts must be transferred to an account as instructed by the Principal.

* 1. Communication with the Bank

The Bank:

* + 1. is only subject to, and only obliged to recognise, notifications or directions given in accordance with this document;
    2. may rely on any document or notice (including any facsimile) reasonably believed by it to be genuine and correct, and purporting to be from the Contractor or Principal;
    3. has no duty or obligation to investigate the authenticity or correctness of the matters stated in any document or notice provided by the Contractor or the Principal to the Bank (including, to avoid doubt, any Payment Instruction in ABA File Format), or confirm that the signatories on any document or notice were properly appointed; and
    4. is under no duty to enquire or determine whether or not any instructions received by the Contractor or the Principal (including, to avoid doubt, any Payment Instruction in ABA File Format) are in accordance with any agreement or document (including the Contract or PBA Trust Deed Poll) other than this document.
  1. Limit on Bank duties and responsibilities
     1. The duties and responsibilities of the Bank in relation to the Accounts and the Deposit Amount are limited to those set out in this document and, accordingly, the Bank:
        1. acts as a depository only and is not responsible or liable for the sufficiency or validity of any funds deposited with it; and
        2. is not and must not be treated as being a trustee or fiduciary acting for the benefit of any of the parties.
     2. To avoid doubt, the Bank is not required to use or advance its own funds in addition to the Deposit Amount or otherwise incur financial liability on its part in performance of its duties or the exercise of its rights under this document.
     3. The Bank is under no duty to ensure that funds withdrawn from the Accounts are actually applied for the purpose for which they were withdrawn.
     4. The Bank is not responsible or liable to the Contractor, Principal or any other person for:
        1. any non-payment of any sums which should be paid into the Accounts by the Principal;
        2. any withdrawal from the Accounts in accordance with any Payment Instruction provided that the Bank acted in good faith in relation to that withdrawal;
        3. any loss or liability arising out of or in connection with its performance of or its failure to perform any of its obligations under this document, save as are caused by its own direct fraud, gross negligence or wilful default, and under no circumstance will the Bank be liable:
           1. for acting in accordance with or relying on any instruction (including, but not limited to a Payment Instruction), notice, demand, certificate or document given by the Contractor or Principal; or
           2. to any party for any consequential loss (including loss of business, goodwill, opportunity or profit) even if advised of such loss or damage.
  2. Survival

Clauses 5.5 and 5.6 above and this clause 5.7 will survive notwithstanding any termination of this document or the resignation or replacement of the Bank as account bank.

1. Term of this document

This document remains in full force and effect unless and until the Bank terminates it in accordance with clause 5.4 or is notified otherwise by the Principal and the Contractor.

1. Notices
   * 1. (**Form of Notices**) Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this document:
        1. must be in writing; and
        2. must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
     2. (**Procedure for sending notices**) All notices must be:
        1. delivered or posted by prepaid post to the address; or
        2. sent by email in the form of a .pdf file letter (or such other form agreed by the Principal) to the email address,

of the addressee set out in the notice details set out below (or as otherwise notified by that party to each other party from time to time):

* + - 1. the **Contractor**:

[**insert postal and email address of Contractor**];

* + - 1. the **Bank**:

[**insert postal and email address of Bank**]

* + - 1. the **Principal**:

[**insert postal and email address of Principal**].

* + 1. (**Date of receipt**) Subject to clause 7(d), a notice is taken to be received by the addressee:
       1. in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
       2. in the case of email, when the sender receives confirmation on its server that the message has been transmitted; and
       3. in the case of delivery by hand, on delivery.
    2. (**Next Business Day**) If the communication is taken to be received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.
    3. (**Notices sent by email**) In connection with notices sent by email only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this clause 7. Any text in the body of the email or the subject line will not form part of the notice.

1. Cumulative rights

A party's rights and remedies under this document do not exclude any other legal right or remedy.

1. Miscellaneous
   1. Alterations

Subject to clause 5.4, no variation, modification or waiver of any provision in this document, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing and signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

* 1. No Fettering

Nothing contained in this document or contemplated by this document has the effect of constraining the Principal or placing any fetter on the Principal’s discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.

* 1. Approvals and consents

Except where this document expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this document.

* 1. Assignment

A party may only assign this document or a right under this document with the prior written consent of each other party.

* 1. Costs
     1. Except as otherwise provided in this document, each party must:
        1. pay its own costs and expenses in connection with negotiating, preparing, executing and performing this document; and
        2. perform its obligations in accordance with this document at its own cost.
     2. The Contractor must pay all costs and expenses of the Bank on demand in relation to:
        1. the negotiation, preparation, execution, delivery, stamping, registration, completion of any variation or assignment of this document; and
        2. the enforcement, protection or waiver of any rights under this document.
  2. Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this document or any transaction contemplated by this document, must be paid by the Contractor.

* 1. Clauses to survive termination
     1. All provisions of this document which expressly or by implication from their nature are intended to survive termination, completion or expiration of this document will survive such termination, completion or expiration, including any provision which is in connection with:
        1. confidentiality or privacy; and
        2. any right or obligation arising on termination of this document.
     2. Nothing in this clause 9.7 prevents any other provision of this document, as a matter of interpretation, also surviving the termination of this document.
     3. No right or obligation of any party will merge on completion of any transaction in accordance with this document. All rights and obligations in accordance with this document survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this document.
  2. Counterparts

This document may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

* 1. No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

* 1. Entire agreement

This document constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

* 1. Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this document and any transactions contemplated by it.

* 1. Severability

Any provision of this document that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this document nor affect the validity or enforceability of that provision in any other jurisdiction.

* 1. Waiver and estoppel
     1. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this document by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or this document.
     2. A waiver given by a party under this document is only effective and binding on the other party if it is given or confirmed in writing by the party granting the waiver.
     3. No waiver of a breach of a term of this document operates as a waiver of any other breach of that term or of a breach of any other term of this document.
     4. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under this document does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this document.
  2. Relationship
     1. Neither this document nor the relationship created by it, are intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
     2. The parties must not act as or represent themselves to be the servant or agent of the Principal.
  3. Confidentiality

Save in relation to the supply of any information to the Principal (which the parties hereby permit), a party may only use confidential information of another party for the purposes of this document, and must keep the terms of this document and any confidential information of another party confidential except where:

* + 1. the information is public knowledge (but not because of a breach of this document) or the party has independently created the information;
    2. disclosure is required by Law or a regulatory body (including a relevant stock exchange);
    3. disclosure is made to a Subcontractor on the basis that the Subcontractor keeps the information confidential; or
    4. disclosure is made to any other person who must know for the purposes of this document on the basis that the person keeps the information confidential.
  1. Announcements
     1. Subject to clause 9.16(b), a public announcement in connection with this document or any transaction contemplated by this document must be agreed by the parties before it is made, except if required by Law or a regulatory body (including a relevant stock exchange), in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of each other party.
     2. Notwithstanding clause 9.16(a), the Principal may at any time, without consulting the other parties to this document, make a public announcement in connection with this document:
        1. for the purpose of responding to inquiries in relation to the status and progress of the Project;
        2. for the purpose of responding to inquiries in relation to payment to Subcontractors that have been engaged to carry out and complete parts of the Project; and
        3. as the Principal considers to be necessary for the proper operation of government, as determined by the Principal from time to time, in its absolute discretion.
  2. Principal as a party
     1. Subject to clause 9.17(b), it is agreed and acknowledged that the Principal is a party to this document to benefit from the rights, acknowledgements and benefits conferred on it expressly or by virtue of being a party to this document. To avoid doubt, any act, matter or thing requiring the consent, approval or agreement of a party to this document is a right or benefit for the purposes of this clause 9.17.
     2. If the Principal issues a notice in writing pursuant to clause 4.1(a), the Principal and the Authorised Representative shall be bound by and subject to the provisions of this document as if it were the holder of the Accounts (and for so long as it has taken exclusive control of the operation of the Accounts pursuant to clause 4.1(a)).
  3. Governing law and jurisdiction

This document is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

**EXECUTED** as a deed.

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

|  |  |  |
| --- | --- | --- |
| executed as a deed by [NAME OF CONTRACTOR], in accordance with Section 127 of the *Corporations Act 2001* (Cth): |  |  |
|  |  |  |
| Signature of director |  | Signature of director/company secretary |
|  |  |  |
| Name |  | Name |

|  |  |  |
| --- | --- | --- |
| **Signed sealed** and **delivered** for and on behalf of **THE COMMONWEALTH BANK OF AUSTRALIA** ABN 48 123 123 124, pursuant to the power of the attorney registered book M336337 and I declare I have no notice of revocation of that power: |  |  |
|  |  |  |
| Signature of witness |  | Signature of attorney |
|  |  |  |
| Name of witness (print) |  | Name of attorney (print) |

The **COMMON SEAL** of the )

**HOUSING AUTHORITY** )

was hereunto affixed )

in the presence of: )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Authorised Officer Signature of Authorised Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Authorised Officer Name of Authorised Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position of Authorised Officer Position of Authorised Officer

**OR**\*[[1]](#footnote-1)

Signed for and on behalf of )

**HOUSING AUTHORITY** )

by an authorised officer: )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Authorised Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Authorised Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position of Authorised Officer

\* Delete the execution clause which does not apply.



PPI – Consolidated Allocation

For the purposes of the PBA Agreement, this Schedule 1 establishes the minimum requirements of a 'PPI – Consolidated Allocation' that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of this document.

The PPI – Consolidated Allocation must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this schedule relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse an amount of money that totals (in aggregate) the amount to be paid by the Principal into the General PBA within 9 days of the issue of the PPI – Consolidated Allocation.
3. Identify the disbursements in paragraph 2 as follows:
   1. amounts to be disbursed from the General PBA to the Contractor; the amount to be disbursed to the Contractor; and the Contractor's account details;
   2. amounts to be disbursed from the General PBA to each Subcontractor; the amount to be deposited to the Subcontractor; and the Subcontractor's account details; and
   3. amounts to be disbursed from the General PBA to the Retention PBA (using a unique identifier for the name of the Subcontractor to which the Retention Amount relates); and the amount to be transferred in relation to that Subcontractor.
4. Specify the date for actioning the PPI – Consolidated Allocation.
5. Be in a form acceptable to the Bank and the Principal.

PPI - Contractor Allocation

For the purposes of the PBA Agreement, this Schedule 2 establishes the minimum requirements of a 'PPI – Contractor Allocation' that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of this document.

The PPI – Contractor Allocation must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this schedule relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse an amount of money that totals (in aggregate) the amount to be paid by the Principal into the General PBA within 9 days of the issue of the PPI – Contractor Allocation.
3. Identify the disbursements in paragraph 2 as follows:
   1. amounts to be disbursed from the General PBA to the Contractor; the amount to be disbursed to the Contractor; and the Contractor's account details.
4. Specify the date for actioning the PPI – Contractor Allocation.
5. Be in a form acceptable to the Bank and the Principal.

PPI - Subcontractor Allocation

For the purposes of the PBA Agreement, this Schedule 3 establishes the minimum requirements of a 'PPI – Subcontractor Allocation' that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of this document.

The PPI – Subcontractor Allocation must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this schedule relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse an amount of money that totals (in aggregate) the amount to be paid by the Principal into the General PBA within 9 days of the issue of the PPI – Subcontractor Allocation.
3. Identify the disbursements in paragraph 2 as follows:
   1. amounts to be disbursed from the General PBA to each Subcontractor; the amount to be deposited to the Subcontractor; and the Subcontractor's account details.
4. Specify the date for actioning the PPI – Subcontractor Allocation.
5. Be in a form acceptable to the Bank and the Principal.

PPI - Retention Allocation

For the purposes of the PBA Agreement, this Schedule 4 establishes the minimum requirements of a 'PPI – Retention Allocation' that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of this document.

The PPI – Retention Allocation must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this schedule relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to transfer to the Retention PBA the Retention Amount(s) identified in the PPI - Retention Allocation which is / are to be held on trust pending receipt of a Retention Release Instruction within 9 days of the issue of the PPI – Retention Allocation.
3. Identify the transfer in paragraph 2 as follows:
   1. amounts to be disbursed from the General PBA to the Retention PBA (using a unique identifier for the name of the Subcontractor to which the Retention Amount relates); and
   2. the amount to be transferred in relation to that Subcontractor.
4. Specify the date for actioning the PPI – Retention Allocation.
5. Be in a form acceptable to the Bank and the Principal.

Contractor Deposit Instruction

For the purposes of the PBA Agreement, this Schedule 5 establishes the minimum requirements of a Contractor Deposit Instruction that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of this document.

A Contractor Deposit Instruction must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this schedule relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse an amount of money that totals (in aggregate) the amount to be paid by the Contractor into the General PBA within 3 days of the issue of the Contractor Deposit Instruction.
3. Identify the disbursements in paragraph 2 as follows:
   1. amounts to be disbursed from the General PBA to each Subcontractor; the amount to be deposited to the Subcontractor; and the Subcontractor's account details; and
   2. amounts to be disbursed from the General PBA to the Retention PBA (using a unique identifier for the name of the Subcontractor to which the Retention Amount relates); and the amount to be transferred in relation to that Subcontractor.
4. Specify the date for actioning the Contractor Deposit Instruction.
5. Be in a form acceptable to the Bank and the Principal.

Retention Release Instruction

For the purposes of the PBA Agreement, this Schedule 6 establishes the minimum requirements of a Retention Release Instruction that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of this document.

A Retention Release Instruction must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this schedule relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse Retention Amounts from the Retention PBA, to the account(s) specified.
3. Identify the disbursements in paragraph 2 as follows:
   1. amounts to be disbursed from the Retention PBA to each Subcontractor (using a unique identifier for the name of the Subcontractor to which the Retention Amount relates); the amount to be transferred in relation to that Subcontractor; and the Subcontractor's account details);
   2. amounts to be disbursed from the Retention PBA to the Contractor (using a unique identifier for the name of the Contractor); the amount to be transferred in relation to the Contractor; and the Contractor's account details; and
   3. the balance of Retention Amounts in the Retention PBA.
4. Specify the date for actioning the Retention Release Instruction.
5. Be in a form acceptable to the Bank and the Principal.

1. Delete the execution clause that does not apply. If in doubt seek advice from LLS as to which execution clause should be used. [↑](#footnote-ref-1)