**HAC Project Bank Account Pack**

**ANNEXURE F**

**Special Conditions for Tier 2 Subcontracts for Project Bank Accounts**

**EXPLANATORY NOTES FOR SUBCONTRACTORS**

*These draft conditions are provided as a suggestion to head contractors and subcontractors as to what they may choose to incorporate in subcontracts where a project bank account is to be utilised. Any decision to use these provisions is at the risk of the contractor and subcontractor. In these explanatory notes, a 'subcontractor' means a subcontractor to the head contractor and also includes any subcontractor who also supplies goods or materials to the head contractor, in each case where the value of the contract for the project is equal to or greater than $20,000 (including GST).*

*The Principal and the State Government recommend that each party seek its own legal advice on matters connected with project bank accounts and contracting generally and accepts no responsibility for these draft conditions.*

*Subcontractors with an aggregate value of $20,000 or more under their relevant subcontracts will automatically participate in the PBA and will not be required to provide an Opt-In Notice. However, subcontractors with an aggregate value of less than $20,000, and all suppliers of goods and materials only will be required to provide an Opt-in Notice in order to participate in the PBA.*

*The PBA will facilitate head contractors in making payment to subcontractors from the relevant project bank account. The funds deposited by the Principal are held on trust for the subcontractors until the relevant subcontractor becomes entitled under its relevant subcontract to be paid.*

The Contractor must inform all potential subcontractors that they are bidding for work on a PBA project.

When engaging with any potential subcontractor, any tender document, requests for quotation, requests for bid or other similar correspondence which invites a subcontractor to quote in relation to the Project, the Contractor must inform the potential subcontractor that further information in relation to PBA projects can be found from the Department of Communities website at: <http://prodhousing/contractors/ProjectBankAccounts/Pages/default.aspx>.

**SPECIAL CONDITIONS FOR TIER 2 SUBCONTRACTS FOR PROJECT BANK ACCOUNT**

*[To be inserted at the beginning of the Subcontractor payment clause.]*

* 1. PBA Acknowledgements

The Subcontractor acknowledges that payment into the Project Bank Account (where the Subcontractor is identified as a Beneficiary under the PBA Trust Deed Poll) shall discharge the Contractor’s obligation to make payment under this Subcontract, to the extent of that payment into the Project Bank Account.

Each party acknowledges the provisions of the PBA Trust Deed Poll.

* 1. Payment Claims

Within [● days][[1]](#footnote-1) of the 'Claim Date' (being the date the Contractor makes a payment claim to the Principal), the Subcontractor shall deliver a claim for payment to the Contractor for the value of works and all amounts then due to the Subcontractor.

Within [● days][[2]](#footnote-2) of receipt of a claim for payment, the Contractor shall certify the amount that is to be paid to the Subcontractor and such amount shall be paid by the Contractor within 25 Business Days of the Claim Date.

* 1. PBA Trust Deed Poll

A payment made to the Subcontractor by the Contractor from the Project Bank Account pursuant to Clause [●] shall not prejudice the right of either party to dispute under this Subcontract whether the amount so paid is the amount properly due and payable. On agreement or determination of any such dispute:

if the Contractor is liable to pay the difference between an amount actually paid and the amount properly due and payable, the difference shall be paid by the Contractor to the Subcontractor from the Project Bank Account; or

if the Subcontractor is liable to refund to the Contractor the difference between an amount paid to it and the amount properly due and payable, the Subcontractor shall return such amount to the Contractor in the manner directed by the Contractor.

The Subcontractor acknowledges the provisions of the *Building and Construction Industry (Security of Payment) Act 2021* (WA) (**SOP Act**) and (in particular) section 14 of the SOP Act. The Subcontractor hereby confirms that nothing in this Subcontract or the PBA Trust Deed Poll shall be construed as permitting or otherwise allowing the Subcontractor to implement an arrangement with its sub-subcontractors that would result in provisions of its sub-subcontracts having no effect by virtue of the application of section 14 or any other provision of the SOP Act.

In this Clause [], the following terms have the following meanings:

**PBA Trust Deed Poll** means the document of that name which is entered into between the Contractor and the Principal, in connection with the [*insert project name*] project and tender number [*insert tender number*], pursuant to which the Project Bank Account is to be established and moneys due to the Contractor from the Principal are to be paid and held on trust.

**Project Bank Account** means the bank account established by the Contractor as a trust account as more particularly defined in the PBA Trust Deed Poll.

1. Identify the date that is five days prior for the date for the Contractor to make its payment claim under the head contract. [↑](#footnote-ref-1)
2. Identify the date that is five days after certification under the head contract. [↑](#footnote-ref-2)