Bank guarantee

Note to tenderers: If under the Master Guarantee Program, Defence and the tenderer have pre-agreed amendments to the template Bank Guarantee Deed, the tenderer should submit that pre-agreed varied version as part of its tender, indicating the alterations that were pre-agreed. Defence will then verify whether the alterations are consistent with pre-agreed amendments. If there are any further proposed amendments beyond those that were pre-agreed, these will be assessed on a case by case basis.

This DEED is made on **(INSERT DATE)**

For the benefit of the Commonwealth of Australia represented by the Department of Defence ABN 68 706 814 312 (‘the Commonwealth’)

by **(INSERT NAME OF COMPANY)**, **(ACN/ARBN and ABN if applicable)** whose registered office is **(INSERT DETAILS)** (‘the Promisor’).

RECITALS

1. The Commonwealth has a Contract **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE)** (‘the Contract’) with **(INSERT NAME OF CONTRACTOR)**, **(ACN/ARBN and ABN if applicable)** having its registered office at **(INSERT DETAILS)** (the ‘Contractor’) for the supply of **(INSERT BRIEF DESCRIPTION)**.
2. The Contractor is required by the Contract to obtain this undertaking for the Commonwealth.

OPERATIVE PART

1. The Promisor undertakes to pay on demand to the Commonwealth any amount or amounts which may be demanded by the Commonwealth from time to time, up to a maximum of $**(INSERT AMOUNT)** (the 'Sum'). This undertaking is unconditional.
2. To make a demand, the Commonwealth shall give the Promisor a written notice setting out the amount demanded and the time within which it is to be paid.
3. The Promisor shall not make any inquiry in relation to the demand.
4. This undertaking continues in force until the earlier of:
   * + 1. the Promisor has received written notice from the Commonwealth that the undertaking is no longer required; and
       2. the Commonwealth has received from the Promisor the whole of the Sum, or the balance after any part payment of the Sum.
5. Any payments made by the Promisor to the Commonwealth under this undertaking are to be made by electronic funds transfer with the Commonwealth of Australia identified as the payee.
6. This undertaking cannot be varied or waived under any circumstances. To avoid doubt, this undertaking is not affected if the Contract is varied, the Contractor is granted an extension of time to perform the Contract, or the Commonwealth waives a breach, failure or default of the Contractor.
7. Unless the contrary intention appears, any notice under this undertaking shall be effective if it is in writing and sent from and delivered to the Commonwealth or Promisor, as the case may be, as detailed below:

**[INSERT COMMONWEALTH ADDRESS, FAX NUMBER AND EMAIL]**;

**(INSERT PROMISOR ADDRESS, FAX NUMBER AND EMAIL)**.

1. A notice given in accordance with clause 7 is delivered:
   * + 1. if sent by pre-paid post, when received at the address; or
       2. if hand delivered, when received at the address,

but if the receipt is not on a Working Day or is after 5.00pm (recipient's local time) on a Working Day, the notice is taken to be received at 9.00am (recipient’s local time) on the next Working Day. For the purpose of this clause, 'Working Day' in relation to the doing of an action in a place, means any day other than a Saturday, Sunday or public holiday in that place.

1. The laws of the **(INSERT STATE OR TERRITORY)** apply to this undertaking. The courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this undertaking.

SIGNED AS A DEED:

Note for Deed Signature: Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the ‘Executing Agreements Fact Sheet’, found on the Procurement and Contracting intranet page at:

<http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/Factsheets-and-Guidance.aspx>

This guidance is developed for Commonwealth Personnel and should be used to assess the Promisor’s execution of the Deed. The Promisor should seek its own independent legal advice on its execution of the Deed.

**(INSERT THE PROMISOR’S USUAL SEALING CLAUSE)**