Trust Deed

**[FOR USE WITH HEAD CONTRACT (GMP) ONLY]**

**Deed** **made at** ………… **on** ………………………., 20……

**Parties:** **Commonwealth of Australia ("Commonwealth")**

***[INSERT NAME AND ABN OF CONTRACTOR]* ("Contractor")**

**Recitals**

A. The Commonwealth and the Contractor have entered into the agreement referred to in Item 1 of the Schedule ("**Contract**").

B. Under clause 12.5 of the Contract:

* + 1. the amounts payable to the Contractor under the Contract may include moneys payable to the subcontractors engaged by the Contractor under the Contract ("**Beneficiaries**"); and
    2. the Commonwealth and the Contractor have agreed that all moneys payable to the Contractor on account of the Beneficiaries will be held on trust on the terms of this Deed.

**This Deed provides**

1. Trust Account
   * 1. Upon receiving the amount settled upon trust by the Contract Administrator (as defined in the Contract) under clause 2(a), the Contractor will open a trust bank account in the name of the Contractor ("**Trust Account**") with an approved deposit taking institution under the *Banking Act* *1959* (Cth) approved by the Contract Administrator, such approval not to be unreasonably withheld.
     2. The Trust Account will be given the name set out in Item 2 of the Schedule.
     3. The Contractor will be the sole signatory to the Trust Account and will be empowered to operate the Trust Account only in accordance with this Deed.
2. Trust Property
   * 1. The Contract Administrator will settle upon trust the amount of $10.00 which, together with any future payments into the Trust Account, will be held by the Contractor as trustee on trust for the benefit of the Beneficiaries from time to time and on the terms and conditions of this Deed. These moneys may only be disbursed in accordance with this Deed and (subject to clauses 3 and 4) only in favour of the Beneficiaries. The Contractor acknowledges and agrees that (subject to clauses 3 and 4) it does not have and will not have a beneficial interest in the funds which from time to time are standing to the credit of the Contractor in the Trust Account ("**Trust Fund**").
     2. The Commonwealth will pay all money which is payable under clause 12.5(b)(i) and (ii) of the Contract into the Trust Account to be held on the above trust.
     3. Each of the Beneficiaries will have a beneficial entitlement to ensure that this Deed is administered in accordance with its terms, but none of the Beneficiaries will be entitled to a specific portion of the Trust Fund, other than in accordance with clause 6.
3. Payments out of Trust Account
   * 1. The Contractor will be entitled to make payments from the Trust Account:
        1. to the Beneficiaries; and
        2. to a Retention Monies Trust Account (as defined in the Contract) where it is otherwise required to do so in accordance with a Statutory Requirement.
     2. Where, under the terms of any of the agreements between the Contractor and one of the Beneficiaries, the Contractor becomes entitled to the payment of money by any of the Beneficiaries or to deduct any money from moneys which are then or will thereafter become payable to any of the Beneficiaries, such moneys may be paid to the Contractor out of the Trust Account provided that:
        1. an authorised officer of the Contractor provides the Contract Administrator with a statement setting out the relevant details and particulars giving rise to the Contractor's entitlement to these moneys;
        2. the Contract Administrator certifies that, on the basis of the statement provided by the Contractor, he or she believes that such moneys are due and owing by the relevant Beneficiary to the Contractor; and
        3. the Contractor's entitlement to payment of, or to deduct, such money does not arise in respect of a claim for Retention Monies which have been paid into a Retention Monies Trust Account as provided for under clause 3(a)(ii).
4. Interest on Trust Account AND BANK CHARGES
   * 1. Subject to clause 8, all interest which accrues upon the Trust Fund will belong to and vest absolutely in the Contractor and will, upon the issue of a Notice of Completion for the Works or the last Stage pursuant to clause 13 of the Contract, be released to the Contractor. Subject to clauses 3 and 4, the Contractor will have no beneficial interest in the capital of the Trust Fund.
     2. The costs of operating the Trust Account including any bank fees, financial institution duty or other taxes, charges or imposts will be paid by the Contractor.
5. Indemnity

The Contractor must indemnify the Commonwealth and must at all times keep it indemnified in respect of all actions, claims, demands and proceedings (whether brought or made by one of the Beneficiaries or otherwise) arising out of or in any way connected with the Contractor's dealings with the Trust Account.

1. Vesting
   * 1. Subject to the following provisions of this clause 6, the Trust Fund, the Trust Account and the trust established in accordance with this Deed will terminate and vest absolutely on the date which is 2 years from:
        1. the date on which the final Defects Liability Period (as defined in the Contract) under the Contract expires; or
        2. subject to clause 8, any other date on which the Contract is terminated,

(whichever is applicable) otherwise known as the "**Vesting Date**".

* + 1. The Commonwealth may at any time in its absolute discretion appoint a date earlier than the Vesting Date to be the date for vesting of the Trust Fund for the purposes of this Deed.
    2. Upon the vesting of the Trust Fund, the Contractor must disburse the Trust Fund to the Beneficiaries or (subject to clause 3) itself (as the case may be) and thereafter provide the Contract Administrator with:
       1. financial statements from the bank at which the Trust Account is established; and
       2. receipts from the Beneficiaries of the amounts paid to them,

each in a form satisfactory to the Contract Administrator and establishing that all payments in and out of the Trust Fund have been made in accordance with this Deed.

1. Audit

The Commonwealth may at any time carry out an audit of the Trust Account.

1. Removal of Contractor as Trustee

If:

* + 1. the Commonwealth terminates or purports to terminate the Contract either under clause 14 of the Contract or otherwise; or
    2. an Insolvency Event (as defined in the Contract) occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons;

then:

* + 1. the Contractor will immediately and without any further action being required, cease to be the trustee; and
    2. the Commonwealth will nominate another person as the trustee of the Trust Account on the terms of this Deed, in which case clause 6(a)(ii) will not apply to the termination.

Thereafter the person so nominated must calculate the interest accrued upon the Trust Fund to the date that the Contractor ceased to be trustee of the Trust Account and will pay this amount to the Contractor. After receipt of this amount the Contractor will cease to have any right to the interest which accrues upon the Trust Fund.

1. Power of attorney

If the Contractor ceases to be trustee of the Trust Account it must do all such acts and do all such things as the Commonwealth may deem necessary for the effectual operation of clause 8 and, without limiting the generality of the foregoing, the Contractor appoints the Commonwealth to be the true and lawful attorney of the Contractor with full power and authority to execute all such documents as may be necessary to give effect to the operation of clause 8 and thereafter the person nominated by the Commonwealth under clause 8 as the new trustee will administer the Trust Fund and make payments in and out of the Trust Fund in accordance with the terms of this Deed.

Schedule

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| --- | --- | --- |
| Item 1 (Recital A) | Details of Contract: | Head Contract (GMP) for ***[INSERT]*** dated ***[INSERT]*** |
| Item 2 (Clause 1) | Name of Trust Account: | ***[INSERT NAME OF PROJECT]*** Beneficiaries Trust Account |

**Executed** as a deed.

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed sealed and delivered** for and on behalf of **the Commonwealth of Australia** by or in the presence of: |  |  |  |
|  |
| Signature of Witness |  |  | Signature of Authorised Officer |
| Name of Witness in full |  |  | Name and Position of Authorised Officer |

***[INSERT APPROPRIATE SIGNING BLOCK FOR CONTRACTOR]***