Proposed conditions for subcontracts to facilitate Project Bank Accounts

(July 2019)

# Definitions

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| **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, 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. |

# Project Bank Accounts

## Subcontractor acknowledgement

* + 1. 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
    2. Each party acknowledges the provisions of the PBA Trust Deed Poll

## Payment claims

* + 1. Within [*insert*] days 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.
    2. Within [*insert*] days 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 28 days of the Claim Date.

## PBA Trust Deed Poll

* + 1. A payment made to the Subcontractor by the Contractor from the Project Bank Account 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:
       1. 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
       2. 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.
    2. The Subcontractor acknowledges the provisions of the *Construction Contracts Act 2004* (WA) (**CCA**) and (in particular) section 9 of the CCA. 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 9 or any other provision of the CCA.