

REFLECTIVE CLAUSE

SECURITY OF PAYMENT

1. General

In this clause “subcontract” includes an agreement for supply of goods or services (including professional services and plant hire) or both and “subcontractor” includes a supplier of goods or services (including professional services and plant hire) or both.

The Contractor shall ensure that each subcontract, whether written or oral, entered into by the Contractor or any subcontractor in respect of the work under the Contract and which has a value of \$25,000 or more at the commencement of the subcontract, includes provisions in the form or to the effect of the form, as the case may be, of those contained in this clause, including the provisions of this subclause.

2. Options as to Form of Security

Each subcontract which

- requires the subcontractor to provide a cash security to its principal;
- allows the subcontractor’s principal to deduct retention moneys from any payment made by it to the subcontractor; or
- provides for both (a) and (b) of this subclause

shall allow the subcontractor the option at any time to provide an unconditional undertaking or unconditional undertakings in lieu of a cash security or retention moneys. To the extent that the subcontractor provides an unconditional undertaking or undertakings, the subcontractor’s principal shall not deduct retention moneys and shall forthwith release to the subcontractor any retention moneys or cash security then held.

3. Trust for Cash Security and Retention Moneys

Each subcontract shall include a provision having the effect that:

- When a party receives or retains security in cash or converts security to cash, that security is held in trust by the security holder from the time of receipt, retention or conversion, as the case may be, and the security

holder must forthwith deposit the money into a trust account in a bank selected by that party;

- when a party receives payment for or on account of work, goods or services provided by the other party and does not pay that party the whole amount received, the difference shall be received in trust for payment for the work, goods or services and shall be deposited in a trust account as in (a) of this subclause;
- the moneys shall be held in trust for whichever party is entitled to receive them until they are paid in favour of that party and the security holder shall maintain proper records to account for such moneys; and
- any interest earned by the trust account shall not be held in trust, and shall be owned by the party holding the security.

If the party holding security has a policy of insurance protecting subcontract payments due to the other party which is equivalent to the HIA Security of Payment Bond, then compliance with 9(a) to (d) of this subclause is not required.

Whenever requested by the Principal to provide evidence verifying that the Contractor is holding in trust an amount which the Contractor should be holding in trust, the Contractor shall provide evidence to the reasonable satisfaction of the Principal that the amount is held in trust. If the Contractor fails to do so then, in addition to any other remedy which the Principal may have against the Contractor, the Principal may withhold an equivalent amount from payments to the Contractor.

4. Payments

Each subcontract shall include:

- an obligation for the subcontractor's principal to pay the subcontractor regular progress payments of 100% of the value of work, goods or services provided by the subcontractor less only retention moneys, if any, paid into the trust account referred to in subclause 3 (*Trust for Cash Security and Retention Moneys*).
- an entitlement to progress payments within a period not exceeding,
 - in the case of the Contractor's subcontractors, 35 days,
 - in the case of all other subcontractors, 42 days,

after the date upon which a progress claim, which includes work, goods or services provided under the subcontract, is lodged by the Contractor with the Superintendent.

- provisions equivalent to the next two paragraphs of this subclause.

Nothing in this subclause shall be read so as to prevent the Contractor from paying a subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in (b) of this subclause.

If any provision of the first paragraph of this subclause is inconsistent with any other provision in a subcontract, the provisions of the first paragraph shall prevail to the extent of the inconsistency.

5. Interest on Overdue Payments

Each subcontract shall include provisions equivalent to the appropriate Clause of the General Conditions of Contract and shall prescribe a rate on interest which is not less than the rate prescribed pursuant to that clause.

6. Alternative Dispute Resolution

Each subcontract shall include provisions incorporating the dispute resolution procedures outlined in the Contract except that, in each case, it shall not be mandatory for the subcontractor to pursue the contractual dispute resolution mechanism if the only remedy sought by the subcontractor is an order that the subcontractor's principal pay to it an amount which is not disputed to be due and payable under the subcontract.

7. Documents to be Provided to Subcontractors

Each subcontract shall include a provision which requires the subcontractor's principal to provide to the subcontractor, before the subcontractor commences work under the subcontract, a copy of the following provisions of the contract between the subcontractor's principal and its principal:

- the provisions equivalent to this clause *Security of Payment*.
- the clauses relating to proof of payment of subcontractors, times for payment claims and payment, interest on overdue payments and alternative dispute resolution.

8. Register of Subcontracts

The Contractor shall maintain a register of all subcontracts which have a value of \$25,000 or greater showing brief details of the subcontract work, the name, address and telephone number of the subcontractor, and provide an up to date copy of the register when requested by the Superintendent.

If further requested by the Superintendent, provide an unpriced copy of the subcontract agreement within 14 days of such request