Collateral Warranty

**[FOR USE WITH ECI HEAD CONTRACT ONLY]**

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

**By: The person described in Item 1 of the Schedule ("Warrantor" which expression will include its successors and assigns)**

**In favour of: Commonwealth of Australia ("Commonwealth")**

Recitals

A. The Commonwealth and the party described in Item 2 of the Schedule ("**Contractor**") have entered into the contract described in Item 3 of the Schedule ("**Contract**").

B. The Warrantor is to supply the goods described in Item 4 of the Schedule ("**Equipment**") which will be incorporated into the Works (as defined in the Contract).

C. The Warrantor has agreed to give warranties to the Commonwealth in respect of the Equipment.

This deed poll provides

1. The Warrantor:
   * 1. warrants to the Commonwealth that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
     2. gives the warranty more particularly set out in Item 5 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

1. The Warrantor must make good or replace at its sole cost so much of the Equipment as within the period described in Item 6 of the Schedule:
   * 1. is found to be of a lower quality or standard than that referred to in clause 1; or
     2. shows deterioration of such extent that in the opinion of the Commonwealth the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.
2. The Warrantor will be liable for the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.
3. If the Warrantor does not, within 14 days of the Commonwealth giving the Warrantor notice to do so, make good or replace the Equipment as required by clause 2, then:
   * 1. without limiting any other rights or remedies which the Commonwealth may have against the Warrantor, the Commonwealth may do so; and
     2. the costs, expenses, losses and damages suffered or incurred by the Commonwealth in making good or replacing the Equipment as required by clause 2 will be a debt due from the Warrantor to the Commonwealth.
4. The Warrantor will indemnify the Commonwealth against all costs, expenses, losses and damages suffered or incurred by the Commonwealth arising out of or in connection with any breach by the Warrantor of:
   * 1. the warranties given by it under this Deed; or
     2. its other obligations under this Deed.
5. Nothing contained in this Deed is intended to nor will render the Commonwealth in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

Schedule

|  |  |  |
| --- | --- | --- |
| Item 1: | Name and Address of Warrantor | ***[INSERT NAME AND ABN OF WARRANTOR]*** |
| Item 2: | The Contractor (Recital A) | ***[INSERT NAME AND ABN OF CONTRACTOR]*** |
| Item 3: | The Contract (Recital A) | ***[INSERT BRIEF DETAILS, INCLUDING PROJECT DESCRIPTION/NUMBER]*** |
| Item 4: | The Equipment (Recital B) | ***[INSERT DETAILS]*** |
| Item 5: | Detailed Warranty of Warrantor (Clause 1) | ***[INSERT DETAILS]*** |
| Item 6: | Period of Years (Clause 2) | ***[INSERT]*** years from the Date of Completion of the Works (each as defined in the Contract) |

**Executed** as a deed poll.

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