

AN AGREEMENT DATED

BETWEEN:

PRINCIPLE CONTRACTOR:

(Selected) ABN: 93 168 103 080

SUB-CONTRACTOR:

(Installer) ABN:

1. In consideration of:
 - a) the *Sub-contractor* (Installer) agreeing to undertake *trade works* whenever asked by Selected; and
 - b) Selected agreeing to pay, on demand by the *Sub-contractor*, the sum of \$1, the parties agree that the period trade contract conditions overleaf are deemed to be incorporated into each *trade contract* for a period of twelve (12) months from the date of this agreement.
2. The *Sub-contractor* (Installer) acknowledges and agrees that:
 - a) Selected has not made any representation; and
 - b) the *Sub-contractor* (Installer) has not relied on any representation made by Selected, as to the availability of work or the number of work orders that will be issued by Selected.
3. The parties agree that for each *trade contract* the scope of the *trade works*, the commencement and completion dates of the *trade works* and the price of *trade works* will be set out:
 - a) in a quote from the *Trade Contractor* (Installer) that is accepted by Selected;
 - b) in a Work Order (or Trade Contract) issued by Selected that is accepted by the *Sub-contractor* (Installer); or
 - c) as otherwise evidenced in writing and signed by the parties.
4. The parties agree that this agreement does not form a contract to carry out work. The obligation to carry out trade works arises on the formation of a *Work Order or trade contract* as described in paragraph 3 above.
5. "*Defects Liability Period*" in *trade contract* means a period of 24 months from the practical completion of the product installation trade works, detailed in the *Trade Contract* or *Work Order* issued to the *Sub-contractor* (Installer) by Selected.

INFORMATION TO BE COMPLETED BY THE SUB-CONTRACTOR (Installer)

*** Payment of your claim will be withheld if any of these documents are missing or expired!**

TRADE LICENCE NO: (if applicable) _____

- ★ PUBLIC LIABILITY INSURANCE: (Not Less Than \$10,000,000)

Insurer:	_____	
Policy No.	_____	Current to _____
- ★ WORKERS COMPENSATION INSURANCE:

Insurer:	_____	
Policy No.	_____	Current to _____
- ★ PERSONAL SICKNESS & ACCIDENT INSURANCE

Insurer:	_____	
Policy No.	_____	Current to _____

Note: The *Sub-contractor* (Installer) should consider the General Indemnity in clause 10 of the Terms and Conditions, seek confirmation whether selected's (or ultimate *Head Contractor's*) building works insurance policy provides appropriate cross cover for the *Sub-contractor* (Installer) and seek insurance advice accordingly.

Are you registered for GST? YES NO

The parties agree that the Period Trade Contract conditions referred to above are those that appear on the next pages and they are exactly the same as the T&C's on the Subbie Starter Kit.

PRINCIPAL CONTRACTOR'S SIGNATURE
(Selected Manager)

SUB-CONTRACTOR'S SIGNATURE
(Installer)

These Terms and Conditions represent the agreement between the Sub-contractor and Selected Building Services ABN 93 168 103 080 upon which Selected engages the Sub-contractor to perform work, from time to time.

1. Definitions

Unless the contrary intention appears, in these Terms and Conditions:

- (a) **Commencement Date** means the date upon which Works, or any part of the Works, must commence, pursuant to any Work Contract;
- (b) **Completion Date** means the date upon which Works, or any part of the Works, must be completed by, pursuant to any Work Contract;
- (c) **Documents** means, collectively, these Sub-contractor T&Cs, Guarantee & Indemnity Terms and Privacy Authority collectively;
- (d) **Guarantee** means any guarantee or indemnity granted by the Guarantors, as identified in Part 9: Guarantor, in our favour in relation to your obligations under these Sub-contractor T&Cs, pursuant to the terms of the Guarantee & Indemnity Terms, or otherwise;
- (e) **Guarantee & Indemnity Terms** means the terms specified in the document titled "Guarantee & Indemnity" attached to these Sub-contractor T&Cs;
- (f) **Guarantors** means the person or persons specified in Part 9: Guarantor;
- (g) **Personnel** means any person or entity engaged by you in any way whatsoever that you are using or providing to perform the Works, or any part thereof;
- (h) **PMSI** means a purchase money security interest pursuant to the PPSA;
- (i) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and **PPSR** means the register established and maintained in accordance with the PPSA;
- (j) **PPSR Security Interest** means a Security Interest that is subject to the PPSA or otherwise may be registered on the PPSR;
- (k) **Price** means the price that we agree to pay you in relation to Works under a Work Contract (and unless expressly stated, will be inclusive of GST);
- (l) **Privacy Authority** means the terms contained in the document of that title, attached to these Sub-contractor T&Cs;
- (m) **Quote** means a written notice given by you which is an offer by you to perform Works for a certain Price, and any other terms and conditions you are prepared to accept in relation to performing the Works;
- (n) **WH&S** means workplace/occupational, health and safety;
- (o) **Safe Work Method Statement** means a document which describes the activity or task to be undertaken, identifies the Workplace, Health & Safety (hereafter called WH&S) hazards or risks associated with each stage or part of that activity or task, and sets out measures to control such hazards or risks, and contains any further information as is relevant or as prescribed by applicable WH&S laws, regulations, codes, directions or determinations whatsoever;
- (p) **Security Interest** means any security interest or charge you grant us, or any title or interest we have in goods, property, assets and undertakings (whether yours or ours), to secure any amounts payable by you to us, or otherwise your performance of your obligations in accordance with these Sub-contractor T&Cs (whether granted pursuant to these Sub-contractor T&Cs or otherwise);
- (q) **Security of Payment Law** means the *Building and Construction Industry (Security of Payment) Act 2009* (ACT) and any equivalent legislation in other States or Territories;
- (r) **Selected, us, we, our**, whether capitalised or not, means Selected Building Services ABN 93 168 103 080 and/or its agents;
- (s) **Special Conditions** means any special or additional terms and conditions you and we agree to in relation to Works under a Work Contract;
- (t) **Sub-contractor, you, your**, whether capitalised or not, means the Sub-contractor listed in the Sub-contractor Details Form;
- (u) **Sub-contractor T&Cs or T&Cs** means these Sub-contractor Terms and Conditions, and any annexures, schedules or attachments to it;
- (v) **Variations** means any variation to the Works to be done under a Works Contract, which is the subject of clause 7.
- (w) **Work Order** means a written notice given by us which is an offer by us for you perform certain Works for a certain Price, and any other terms and conditions we are prepared accept in relation to you performing the Works;
- (x) **Work Contract** means the binding agreement between you and us which contains the terms upon which you agree to perform certain Works, as created pursuant to clause 2(d);
- (y) **Works** means any work that you must perform, pursuant to a Work Contract.

2. Application of Sub-contractor T&Cs

- (a) We may, from time to time, give you a written notice requesting that you perform Works for us.
- (b) We may request that you perform Works for us by giving you a Work Order. Each Work Order must set out the proposed scope of the Works, the Commencement Date, the Completion Date, the Price of the Works and any Special Conditions.
- (c) If we request that you perform Works for us, you must, in accordance with such request (unless such request is in the form of a Work Order), provide us with a Quote setting out the proposed scope of the Works, the Commencement Date, the Completion Date(s), the Price for the Works and any Special Conditions.
- (d) If:
 - (i) you agree in writing to a Work Order;
 - (ii) we agree in writing to a Quote; or
 - (iii) you and we otherwise agree in writing to the matters that are to be specified in a Work Order or Quote;
 such document (and agreement) together form a Work Contract, which is a binding contract between you and us for you to perform the Works specified in such document.
- (e) The terms of these Sub-contractor T&Cs are incorporated into, and form part of, each Work Contract.
- (f) For the avoidance of doubt:
 - (i) any Work Order we give you is an offer by us; and
 - (ii) any Quote you give us is an offer by you;
 for you to perform the Works, at the Price, and on the terms of such Work Order/Quote, and these Sub-contractor T&Cs.
- (g) Nothing in these Sub-contractor T&Cs, or the Documents, constitutes:
 - (i) any representation, warranty or guarantee that we will request that you perform any Works, give you any Work Order, or accept any Quote, and we may do such things at our absolute discretion;
 - (ii) any restriction on us to engage any other person or entity to perform any work whatsoever;
 - (iii) any right of first refusal (or similar) to perform work that we require to be done, whatsoever;
 - (iv) any restriction on your, or your Personnel's ability to perform any Work for another person or entity (unless such work affects your, and your Personnel's ability to perform the Work required by us); or
 - (v) any relationship of partnership or agency between you and us (or your Personnel with us), and you must not attempt to enter into, vary, or otherwise make any agreement, arrangement, compromise, deed, dealing or any other thing on our behalf, or purport to do any such thing.
- (h) To the extent of any inconsistency between the terms of any Work Order, Quote (or other written agreement) and these Sub-contractor T&Cs, including any Special Conditions specified in the agreed Work Order, Quote (or other written agreement), such Work Order, Quote (or other written agreement) prevails to the extent of any such inconsistency.
- (i) We may amend these Sub-contractor T&Cs at any time at our sole discretion. You giving us any further Quotes, accepting any further Work Orders, or otherwise agreeing with us to perform

Works will be deemed to be your acceptance of any variations to these Sub-contractor T&Cs in force at the time of giving such Quote, accepting such Work Order, or making such agreement.

- (j) Any of your obligations under these Sub-contractor T&Cs includes an obligation that you must ensure your Personnel comply with such obligations.

3. WH&S Compliance

- (a) Prior to you commencing any Works, you must:

- (i) provide us with all details, information and documents that we may reasonably request in relation to all Personnel that will, or may, complete or perform any of the Works, to verify that such Personnel have completed WH&S induction, including any details included in the Sub-contractor Details Form;
- (ii) procure and provide us with any details, information, form or document that we may reasonably require Personnel to provide to us, in relation to such Personnel's WH&S induction; and
- (iii) provide us with a copy of your certificate of compliance as issued by Contractor Compliance Australia Pty Ltd (ABN 50 142 910 709) or another organisation agreed to in writing by us in writing, to ensure that you are complying with all relevant industrial obligations (and you must provide us with updated certificates of compliance each 6 months); and
- (iv) provide us with a fully completed Safe Work Method Statement, in the form required by us, in relation to the Works.

- (b) You represent and warrant that all information, details, forms and documents you provide to us in relation to your Personnel, or which your Personnel provides to us, is true and correct in all respects whatsoever.

- (c) You must ensure that you, and your Personnel, while performing the Works:

- (i) comply with all applicable WH&S laws, regulations, declarations, policies and procedures, and any reasonable direction we may give in that regard; and
- (ii) use all reasonable care and diligence to reduce or minimise any safety risks in relation to the Works or the site on which the Works are to be conducted;
- (iii) immediately notify us of any incidents which causes or may cause personal injury, death, or property damage;
- (iv) cooperate with us, and comply with all reasonable directions we may give, in relation to investigating, reporting, addressing, remedying or rectifying any safety incident or to enable any inspections or audits in relation to safety policies, procedures and systems.

(d) Sub-contractor's General Obligations

- (a) In respect of each Work Contract:

- (i) you must perform, and ensure your Personnel perform, the Works under such Work Contract:
- (1) in accordance with the terms of the Work Contract and our reasonable directions;
- (2) to our reasonable satisfaction;
- (3) with all due care, diligence, workmanship and dispatch;
- (4) if you are providing materials to perform such Works, that such material will be new, fit for its purpose, and free from all defects;
- (ii) you must complete the Works (or any relevant part thereof) under that Work Contract by any Completion Date set in the Work Contract in relation to the Works (or any relevant part thereof);
- (iii) you, and your personnel, have all skills, licences, and registrations required to perform such Works;
- (iv) the Works will be fit for their intended purpose, and in accordance with all plans and specifications relating to the Works;
- (v) the Works will commence, be completed, and otherwise be conducted in accordance with any timetable provided for in the Work Contract, or as reasonably directed by us;
- (vi) you, and your Personnel, will comply with all relevant laws, regulations, codes, guidelines, directions or determinations of any relevant authority (whether government or otherwise),

including any in relation to WH&S, building and construction, employment, workers compensation; superannuation, discrimination;

- (vii) you must ensure that you, and each of your Personnel, do not do anything, or fail to do anything, that may cause us to be in breach of any term or condition in any contract, agreement, deed or arrangement with our customer or any third party;

- (viii) you must familiarise yourself, and ensure all Personnel familiarise themselves, with any policies, procedures or systems of ours and our customer (including in relation to quality management, WH&S), and comply with such policies, procedures and systems; and

- (ix) give all warranties implied by statute or law in relation to the Work Contract and/or the Works.

- (b) You must supply all equipment, tools, plant and materials necessary to carry out the Works (including any safety equipment), unless the Work Contract specifies that we are to do so. You must ensure that all such equipment, tools and plant supplied by you are suitable for their purpose, and maintained in good working order. You are responsible for any damage or loss to any such equipment or tools.

- (c) Without limiting the operation of clause 4(a), during the period in which you are conducting the Works under a Work Contract, you:

- (i) must work cooperatively with all other persons or contractors on the relevant site; and
- (ii) not do anything, or fail to do anything, that may cause any damage to the Works or any other work or activity on the site such Work is being undertaken.

- (d) You must provide us with all information as and when reasonably required by us to verify that you have complied with your obligations pursuant to the terms of a Work Contract – including those of these Sub-contractor T&Cs. If you fail to do so, we may withhold any amounts payable by us to you.

5. Responsibility for Works and Site

- (a) You are responsible for any loss or damage to the Works, whether caused by your own act, omission, default or negligence, or that of your Personnel, that occurs during the time that you are conducting the Works, and, without limitation, you must, at your cost, remedy any such loss or damage to the Works within seven (7) days of the loss or damage occurring, or such other time as we may reasonably require, as notified in writing.

- (b) You must ensure that any area of the site where you are conducting the Works, or are incidental to you conducting the Works, are clean and tidy at all times.

- (c) You must not do anything, and must not fail to do anything, that may cause loss or damage to the site where you are conducting the Works, or any property on such site.

- (d) At the completion of the Works, you must make good the area of the site where you carried out the Works, and otherwise remove your property (including any tools, plant and equipment) and debris and rubbish from the site.

- (e) If you fail to comply with your obligations under this clause 5, you are responsible for, indemnify us, and keep us indemnified from all costs, expenses, loss, damage and liability whatsoever that we incur or suffer arising out of such non-compliance, including any costs we incur (on an indemnity basis) in performing your obligations under this clause 5. Any amounts we determine you must pay us under this clause 5(e) is a debt due and payable by you to us.

- (f) For the avoidance of doubt:

- (i) we are not required to give you any notice of your non-compliance under this clause 5 before performing your obligations on your behalf, or relying on the indemnity at clause 5(e); and
- (ii) we may deduct any amount you must pay us under clause 5(e) from any amounts we are required to pay you, if we see fit.

6. Commencement of Works

- (a) You must commence the Works, or any part of the Works, by the relevant Commencement Date for such Works, or part of the Works, as specified in a Work Contract, or, if none is stated, as soon as possible.

- (b) If you commence the Works, you irrevocably accept and acknowledge that the site conditions, or anything else that is required to be done before you are to commence the Works, are satisfactory.
- (c) Once you commence the Works, you must not delay the performance of the Works, or otherwise make any claim or objection in relation to the Works (or any Variation or purported variation thereof), arising out of the site conditions, or anything else that is required to be done before you are to commence the Works (including making any claim for additional payment).

7. Variations to Work Contract

- (a) You must not vary the Works in a Work Contract, or do anything that would amount to amending or adding to the scope of the Works in a Work Contract, without our express, prior, written consent.
- (b) We may, at any time, direct you to amend, omit, add to, or otherwise vary the Works you must do pursuant to a Work Contract (**Variation**).
- (c) If we direct you to make a Variation to the Works, you must carry out such Variation as reasonably directed by us.
- (d) The Price for the Works will be increased, decreased, or otherwise adjusted:
 - (i) if you and we agree to an adjustment of the Price, that adjustment;
 - (ii) if there is no agreement as to the adjustment of the Price, an amount we reasonably determine, but:
 - (1) if the Variation causes an increase in the Price, such increase will not be more than the increase in amounts we are entitled to be paid in relation to such Variation; and
 - (2) if the Variation causes a decrease in the Price, such decrease will not be more than the decrease in the amounts we are entitled to be paid arising out of such Variation

8. Defects

- (a) You must, at your cost, make good, repair or replace any of the Works that do not comply with the terms of the relevant Work Contract, is defective, or is otherwise not reasonably satisfactory to us, as soon as possible after we notify you that such make good, repair or replacement of such Works is necessary during the Defects Liability Period.
- (b) Nothing in clause 8(a) limits our rights against you under the terms of these Sub-contractor T&Cs or the relevant Work Contract, or applicable legislation, and for the avoidance of doubt, we retain all applicable rights and remedies that we may claim against you, even if such claim is not made during the Defects Liability Period.
- (c) If you fail to comply with your obligations under clause 8(a), you are responsible for, indemnify us, and keep us indemnified from all costs, expenses, loss, damage and liability whatsoever that we incur or suffer arising out of such non-compliance, including any costs we incur (on an indemnity basis) in making good, repairing or replacing any part of the Works. Any amounts we determine you must pay us under this clause 8(c) is a debt due and payable by you to us.
- (d) For the avoidance of doubt:
 - (i) we are not required to give you any notice of your non-compliance under clause 8(a) before doing anything that you are required to do under that clause, or relying on the indemnity at clause 8(c); and
 - (ii) we may deduct any amount you must pay us under clause 8(c) from any amounts we are required to pay you, or any amounts we have withheld from paying to you, if we deem fit.

9. Personnel

- (a) We may require you to cease providing any Personnel to perform the Works. If we do so, you must immediately instruct such Personnel to cease performing the Work, and appoint another Personnel to replace him/her.
- (b) You must obtain our approval for any Personnel who you wish to supply to perform the Works.
- (c) You represent and warrant that, at all times, your Personnel will be solely engaged (whether as employees, contractors or otherwise)

by you, and no relationship of employer – employee, or any other relationship, arises between us and your Personnel.

- (d) You are solely responsible for, indemnify us, and keep us indemnified, from all costs, expenses, loss, damage or liability (including legal fees on a full indemnity basis) whatsoever in relation to any entitlement or claim of your Personnel, or the engagement by you of such Personnel (including any relevant taxation obligations), whatsoever, including, but not limited to:
 - (i) wages or salaries;
 - (ii) superannuation contributions;
 - (iii) workers' compensation insurance premiums (and claims);
 - (iv) PAYG withholding tax; and
 - (v) Payroll tax.
- (di) Except as set out in these Sub-contractor T&Cs, or a Work Contract, you will have, and must exercise, sufficient and reasonably control over the Works performed by your Personnel.
- (dii) You represent and warrant that each Personnel who performs any part of the Works has the right to work in Australia, and the terms of such Personnel's engagement with you is legal, and in accordance with any relevant laws, regulations, determinations or awards relevant to such engagement.

10. General Indemnity

- (a) You irrevocably indemnify and keep us indemnified from all costs, expenses, loss, damage (including consequential loss) and liability (including legal or enforcement fees, on a full indemnity basis), claims or demands that we incur or suffer arising out of, or in connection with:
 - (i) any breach or default of the terms of a Work Contract, including these Sub-contractor T&Cs by you or your Personnel;
 - (ii) any part of the Work being in breach of any statutory warranty;
 - (iii) any matter caused by a wilful, unlawful or negligent act, omission by you or your Personnel (including personal injury, death, or property damage), including in the course of you performing your obligations under a Work Contract; or
 - (iv) us enforcing our rights under these Sub-contractor T&Cs.
- (b) You must pay us all amounts we are entitled to recover from you under clause 10(a) on demand.

11. Insurance

- (a) You must take out, and maintain until the completion of any Works:
 - (i) workers compensation insurance, or any similar insurance, as required by law;
 - (ii) accident or sickness insurance, where appropriate or required by law;
 - (iii) public liability insurance for an amount of not less than \$10,000,000, or such other amount as we may reasonably direct;
 - (iv) any other insurance that we may reasonably direct, or that are required by law.
- (b) You must:
 - (i) provide us with full details or documentary evidence of all insurance policies taken out by you, as and when requested by us; and
 - (ii) In relation to public liability insurance, such insurance policy must note our interest.
- (c) If you fail to take out any required insurance, we may do so on your behalf, and you indemnify and keep us indemnified for all costs, expenses and liabilities we may incur in doing so. We may, at our discretion, deduct such amounts from what we are required to pay you.
- (d) To the extent that we owe any liability to you or you incur or suffer any cost, expense, loss, damage or liability which you may recover from us, you release, indemnify and hold us harmless in relation to such cost, expense, loss, damage or liability whatsoever to the extent that you are insured in relation to such cost, expense, loss, damage or liability, even if our act or omission, or that of our agents, employees, representatives or personnel whatsoever, caused or contributed to such liability.

12. **Payment**

- (a) You must submit your claims for payment of the Price (or part thereof) to us in writing (in the form of a tax invoice) after completing the Works (or the relevant part of the Works).
- (b) Each claim for payment must be accompanied by a statutory declaration executed by you or your authorised representative, declaring that you have paid, and otherwise complied with all your obligations in relation to:
 - (i) all remuneration and entitlements due to your Personnel in relation to the Works;
 - (ii) all workers compensation insurance premiums, and any other insurance premiums for policies required pursuant to these Sub-contractor T&Cs; and
 - (iii) all taxation liabilities in relation to the Works (including PAYG withholding and payroll tax); andany other matter we reasonably require to be included in such statutory declaration, including anything required by the applicable Security of Payments legislation
- (c) We may, from time to time, prescribe any specific format that any claim for payment, or statutory declaration, under clauses 12(a) or 12(b) must be in, and you must comply with any such prescribed format.
- (d) Subject to clauses 12(a), 12(b) and 12(c), we will pay any claim for payment/invoice within the time specified in the Work Contract, or if none is stated, 30 days.
- (e) No act of us accepting any claim for payment, or paying you any amount, is an admission or agreement by us that the Works performed by you are satisfactory, or otherwise in compliance with the terms of the Work Contract.

13. **Set-Off**

- (a) You must make all payments required to be made under these Sub-contractor T&Cs without any set-off, counterclaim, deduction or withholding for any reason whatsoever.
- (b) If we are liable to pay you any amount for any reason, we may, at our discretion, elect to set-off such amounts from amounts that you must pay us.

14. **Interaction with Head Contract**

- (a) If the Works in a Work Contract are no longer required, or must be suspended, due to such works not being required or suspended under the contract or agreement between us and our customer (including due to any termination of that contract or agreement), we may, by written notice to you:
 - (i) terminate the Work Contract in relation to the balance of Works not performed; or
 - (ii) direct you to suspend such Works not performed (any you must comply with such direction); and
 - (iii) pay you for any part of the Works already performed, subject to the terms of the Work Contract.
- (b) If a Work Contract is delayed, suspended or terminated pursuant to clause 14(a), we will not be liable, and you release and indemnify us from, any cost, expense, loss or damage that you may suffer arising out of any such delay, suspension or termination, other than any amount we are required to pay you under paragraph 14(a)(iii).

15. **Default and Termination**

- (a) We may terminate any Work Contract by written notice to you if you are in breach or default of any terms of the Work Contract (including any terms of these Sub-contractor T&Cs), and you fail to remedy such breach or default within seven (7) days of us giving you a written notice requiring you to remedy such breach or default.
- (b) We will pay you for any Work you performed prior to termination of any Work Contract under clause 15(a), subject to the terms of the Work Contract and these Sub-contractor T&Cs (especially in relation to withholding any amounts for defects).
- (c) After termination under clause 15(a), if we need to hire any person or entity to complete the Works under a Work Contract, any amount that we must pay to that person or entity that is above what we would have paid you to complete the Works, becomes a debt due and payable by you to us (and we may set-off such amounts against what we must pay you).

16. **Assignment**

- (a) You may not assign or sub-contract your rights or obligations under these Sub-contractor T&Cs or any Work Contract except with our express, prior written consent.
- (b) We may assign our rights under these Sub-contractor T&Cs or Work Contract at any time on terms that we see fit.

17. **GST and Taxes**

- (a) All Prices are, unless otherwise expressed, GST inclusive.
- (b) Subject to clause 17(c), when you make a taxable supply to us, we will pay you any GST applicable to such taxable supply, in addition to any other consideration.
- (c) We may withhold any GST payable in relation to a taxable supply until you provide us with a tax invoice in relation to such taxable supply.

18. **Retention of Title over Goods**

- (a) If we provide any goods or materials to you for the purposes of you performing the Work, all such goods or materials remains our property (or that of its legal owner), and:
 - (i) no right, title or interest in such goods or materials pass to you;
 - (ii) you hold the goods or materials, and any proceeds, as our bailee, only;
 - (iii) you must store any such goods or materials so that they are safe and secure;
 - (iv) you must keep the goods or materials and any proceeds thereof in a way so that:
 - (1) they are easily identified as our property (or that of its legal owner);
 - (2) they do not become mixed or comingled with any of your property or assets; and
 - (3) do not become a fixture to any land or any other property or assets; and
 - (v) you must not sell, dispose of or deal with such goods or materials in any way whatsoever;except in the course of performing the Works.

- (b) You agree that we may:

- (i) without prior notice, access your premises to inspect the condition and storage of the goods or materials;
- (ii) enter onto your premises to re-take possession of the goods or materials if you are in default of your obligations under these Sub-contractor T&Cs or Work Contract; and/or
- (iii) register on the PPSR a PMSI over you with respect to the goods or materials.

- (c) You agree and acknowledge that our interest in the Goods, pursuant to this clause 18 is a PPSR Security Interest for the purposes of clause 21.

19. **General Security Interest**

- (a) As security for the payment of any amounts payable by you to us, and the performance of your obligations pursuant to these Sub-contractor T&Cs and each Work Contract, you grant to us a Security Interest over all your present and after acquired personal property (in this clause 19, **Collateral**).
- (b) The Security Interest granted pursuant to clause 19(a):
 - (i) extends to all proceeds of the Collateral; and
 - (ii) to the extent it is necessary to determine the nature of such Security Interest, it is a fixed and floating charge over such Collateral, and any proceeds thereof.
- (c) You must not sell, transfer, encumber, dispose of, grant any rights or interest in or in relation to, or otherwise deal with, any right or interest in any Collateral to which the Security Interest granted pursuant to clause 19(a) applies, except:
 - (i) In the ordinary course of your business, to the extent that such Collateral are 'circulating assets' (as that term is defined in the PPSA); or
 - (ii) With our express, prior written consent.
- (d) Without limiting anything else in these Sub-contractor T&Cs, you consent to us registering the Security Interest granted pursuant to clause 19(a) on the PPSR.

- (e) You agree and acknowledge that the Security Interest granted pursuant to clause 19(a) is a PPSR Security Interest for the purposes of clause 21.

20. Security over Land

- (a) As security for the payment of any amounts payable by you to us, and the performance of your obligations pursuant to these Sub-contractor T&Cs, you grant to us a mortgage and/or charge (**Charge**) over any and all interest or estate you may have in any real property, whether now or in the future (in this clause 20, **Collateral**).
- (b) You irrevocably consent to us to register a caveat in relation to the Collateral, if we see fit.
- (c) Without limiting our rights and interest at law, you must not, transfer, sell, grant any rights or interests over, or otherwise deal with any of your rights and interest in the Collateral without our express, prior, written consent.
- (d) If we register a caveat over the Collateral, when you pay us all amounts payable to us, and otherwise discharge, in full, your obligations pursuant to these Sub-contractor T&Cs, upon request, we will provide you with the relevant documentation to remove or discharge any such caveat or other dealing registered over the title to the Collateral.
- (e) Nothing in this clause 20 obliges us to discharge or remove any interest we register over the title to the Collateral until you have paid all amounts due to us in full, and otherwise complied with all your obligations pursuant to these Sub-contractor T&Cs.
- (f) You agree to pay us, on demand and on a full indemnity basis, all our costs, expenses, disbursements, loss, damage and liability whatsoever (including legal and/or enforcement costs) incurred or paid by us in respect of, or in connection with, the registration, discharge or enforcement of the Charge.

21. PPSA

- (a) This clause 21 applies to any PPSR Security Interests you grant to us, or that we may have, pursuant to the terms of these Sub-contractor T&Cs or any Work Contract, and apply in addition to any other provisions in these Sub-contractor T&Cs.
- (b) You must do all things and sign all documents necessary to:
 - (i) obtain any third party consent to the grant and registration of the PPSR Security Interest;
 - (ii) register (or allow the registration of) and maintain registration of any financing statement on the PPSR in relation to such PPSR Security Interest;
 - (iii) perfect and keep continuously perfected, the Security Interest;
 - (iv) ensure our priority position in relation to the PPSR Security Interest is protected;
 - (v) otherwise allow us to enforce such PPSR Security Interest.
- (c) We may register, you consent to us registering, a financing statement on the PPSR in relation to any such PPSR Security Interest.
- (d) To the extent permitted by the PPSA, you waive your right to receive any notice or copy of any document pursuant to the PPSA, including of any verification statement or financing change statement, to reinstate the Security Interest by payment of any amounts owing or by remedy of any default or pursuant to sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 133, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143, unless the notice is required by the PPSA and cannot be excluded.
- (e) We have all powers granted to us by law, including all rights and powers of secured parties at common law and in the PPSA, to enforce our PPSR Security Interest in any way we see fit.
- (f) In addition to any powers pursuant to clause 21(e), we may at our option:
 - (i) enter, take possession and assume control of the property subject to the PPSR Security Interest;
 - (ii) receive profits of the property subject to the PPSR Security Interest;
 - (iii) carry on any of your business forming part of, or relating to, the property subject to the PPSR Security Interest;

- (iv) sell or agree to sell any of the property subject to the PPSR Security Interest (whether or not we have taken possession) on such terms as we see fit;
 - (v) lease or licence the property subject to the PPSR Security Interest, renew, terminate, surrender or accept the surrender of leases or licences, as we see fit;
 - (vi) appoint a receiver and manager on such terms as we see fit; and
 - (vii) make debtors bankrupt, and wind up companies, and otherwise do all things in connection with any bankruptcy or winding up which we think is necessary for the recovery or protection of the property subject to the PPSR Security Interest, or any part thereof.
- (g) You must not sell, dispose of or otherwise deal with property subject to the PPSR Security Interest in any way (including granting any options over such property) without our prior written consent (including any consent given pursuant to these Sub-contractor T&Cs.
 - (h) If you sell, dispose of, or otherwise deal with the property subject to the PPSR Security Interest in any way, you hold all proceeds from any disposal or dealing with the property subject to the Security Interest on trust for us, and such proceeds are payable by you to us on demand.
 - (i) You must pay to us, on demand, all costs, expenses and other amounts incurred or paid by us in respect of, or in connection with, the registration, discharge or enforcement of the PPSR Security Interest.

22. Guarantee & Indemnity

- (a) You must ensure that each Guarantor validly executes the Documents, particularly in relation to the Guarantee & Indemnity.
- (b) If the Sub-contractor is not a natural person, and/or if the Sub-contractor changes its structure (e.g. changing directors, partners, shareholders), we may ask for any additional persons (e.g. directors, partners, shareholders) to execute the Guarantee & Indemnity before we continue to trade with, or extend credit to, the Sub-contractor.

23. Further Information

- (a) We may, at any time, require you to provide any information for us to assess your credit-worthiness, and you must comply with such request. Without limiting the generality of this clause 23(a), the things that we may request include:
 - (i) if the Sub-contractor is a company, a copy of its constitution and/or shareholders' agreement;
 - (ii) if the Sub-contractor is a partnership, a copy of its partnership agreement/deed;
 - (iii) if the Sub-contractor is a trust, a copy of its trust deed; and
 - (iv) any financial statements, documents or information that we believe, in our absolute discretion, is relevant to the Sub-contractor's credit-worthiness.

(b) Warranties as to Capacity

- (a) You represent, warrant and covenant in our favour that:
 - (i) if the Sub-contractor is a company, the persons signing the Documents on behalf of the Sub-contractor have all necessary power, authority and consent, and the Company has undertaken all necessary corporate action, to execute the Documents, and give effect to the transactions contemplated therein;
 - (ii) if the Sub-contractor is a partnership, the persons signing the Documents on behalf of the Sub-contractor have all necessary power, authority and consent, and the partnership has undertaken all necessary action, to execute the Documents, and give effect to the transactions contemplated therein;
 - (iii) if the Sub-contractor is acting as trustee of a trust:
 - (1) the persons signing the Documents on behalf of the Sub-contractor have all necessary power, authority and consent, and the trust has undertaken all necessary trust action, to execute the Documents, and give effect to the transactions contemplated therein;

- (2) the trustee is entering into the Documents both in its capacity as trustee of the trust, and in its individual capacity; and
 - (3) the trustee is entitled to be indemnified from the assets of the trust;
 - (iv) the Sub-contractor will not undergo a change of control, without our prior written consent (for the purposes of this paragraph, change of control includes adding, removing, or otherwise changing directors, partners, trustees, or otherwise persons who have control of the Sub-contractor).
- (b) You agree, acknowledge, represent and warrant that:
- (i) you are not agreeing to these Sub-contractor T&Cs, or the Documents, as a result of a statement or conduct not expressly included in these Sub-contractor T&Cs or the Documents;
 - (ii) you may not request or require us to do anything, including disclosing anything or giving any advice, except as expressly set out in these Sub-contractor T&Cs or the Documents;
 - (iii) you have read and understand the effect of these Sub-contractor T&Cs and the Documents, and do not require us to provide and advice or explanation thereof;
 - (iv) you have obtained and relied upon independent legal advice or have had the opportunity to obtain such independent legal advice but have elected not to, in relation to these Sub-contractor T&Cs, or the Documents;
 - (v) you have not relied upon any advice from us, or our advisors, in relation to these Sub-contractor T&Cs or the Documents; and

we may rely on this clause 24(b) if you claim that you have entered into these Sub-contractor T&Cs and the documents without legal advice, or that you did not understand the nature and effect of these Sub-contractor T&Cs and the documents, whatsoever.

25. Insolvency of Sub-contractor

- (a) To the extent permitted by law, if you become insolvent, you remain liable to pay amounts owing, or otherwise perform your obligations, pursuant to these Sub-contractor T&Cs or Work Contract, even if we receive a dividend, distribution or payment as a result of your insolvency.

26. No Waiver

- (a) A party does not waive its rights under these Sub-contractor T&Cs unless it gives written notice that it waives that right (and such waiver is limited to the instance referred to in such notice).
- (b) A right is not impaired or waived by:
 - (i) a failure to exercise that right;
 - (ii) a delay in exercising that right;
 - (iii) a partial exercise of that right;
 - (iv) a previous exercise of that right; or

- (v) negotiations between the parties.

27. Force Majeure

- (a) We are not liable for any loss or damage you may suffer caused by any failure by us to perform our obligations resulting from, or caused by, any fact or circumstance outside of our reasonable control, including, but not limited to:
 - (i) you failing to do something you are required to do under these Sub-contractor T&Cs;
 - (ii) Strikes or lockouts;
 - (iii) fires, storms, natural disasters or other acts of God; or
 - (iv) riots, war or civil commotions.
- (b) If any event, fact or circumstance occurs, to which clause 27(a) applies, we will use all reasonable endeavours to remove such event, fact or circumstance.
- (c) Clause 27(b) does not, however, require us to settle any litigation, or employment or industrial dispute, whatsoever.

28. Severability

- (a) These Sub-contractor T&Cs must be read so that its provisions are valid and enforceable. If a provision cannot be read, and to the extent that it is invalid or unenforceable, then:
 - (i) that provision is severed from these Sub-contractor T&Cs to the extent necessary to remove the invalidity or illegality; and
 - (ii) the remaining provisions of these Sub-contractor T&Cs remain valid and enforceable.

29. Entire Agreement

- (a) These Sub-contractor T&Cs and the Documents constitute the entire agreement between the parties in relation to the subject matter of the Documents, and supersede all previous negotiations, understandings, representations, warranties or agreements in relation to the subject matter of the Documents.

30. Successors

- (a) The rights and obligations of the parties under these Trade Sub-contractor T&Cs continue for the benefit, or to bind, the parties and their successors or legal personal representatives, including, but not limited to, any liquidators, administrators, receivers and managers or trustees in bankruptcy appointed to the parties.

31. Jurisdiction

- (a) To the extent permitted by law, these Sub-contractor T&Cs are governed by the laws of the Australian Capital Territory (**Jurisdiction**), where the Works address is ACT; New South Wales (**Jurisdiction**), where the Works address is NSW; Queensland (**Jurisdiction**), where the Works address is Qld, Victoria, (**Jurisdiction**), where the Works address is Vic.
- (b) The parties irrevocably submit to the jurisdiction and courts of the Jurisdiction.
- (c) No party may challenge or otherwise dispute the jurisdiction of the courts of the Jurisdiction to hear any matter in relation to these Sub-contractor T&Cs.

This Guarantee & Indemnity sets out the terms upon which the Guarantors guarantee the Sub-contractor's performance of its obligations in favour of Selected Building Services ABN 93 168 103 080.

1. Definitions

- (a) **Documents** means, collectively, this Guarantee & Indemnity, Privacy Authority and the Sub-contractor T&Cs collectively;
- (b) **Guarantee & Indemnity** means the guarantee and indemnity granted by the Guarantor(s) in our favour pursuant to the terms of this document (and for the avoidance of doubt, refers to both the Guarantor(s) obligations pursuant to this document, and this document itself);
- (c) **Guarantor(s)** means the person or persons specified in the Guarantor Details Form;
- (d) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and **PPSR** means the register established and maintained in accordance with the PPSA;
- (e) **Privacy Authority** means the terms contained in the document of that title, attached to the Sub-contractor T&Cs;
- (f) **Selected, us, we, our**, whether capitalised or not, means Selected Building Services ABN 93 168 103 080 and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)), agents, employees, contractors, officers, directors and representatives whatsoever;
- (g) **Sub-contractor** means the Sub-contractor listed in the Sub-contractor Details Form;
- (h) **Sub-contractor T&Cs or T&Cs** means the document titled "Sub-contractor Terms and Conditions", and any annexures, schedules or attachments to it, including this Guarantee & Indemnity.

2. Guarantee & Indemnity

- (a) Each Guarantor, in consideration of us agreeing to deal with, or engage the Sub-contractor, at the Guarantor(s) request, enter into this Guarantee & Indemnity in our favour.
- (b) The Guarantor(s) irrevocably guarantee, in our favour, the Sub-contractor's due and punctual performance of any of its obligations to us (whether now or in the future, whatsoever), including but not limited to, pursuant to the Documents, and the payment of any money or consideration, whatsoever.
- (c) If the Sub-contractor fails to perform and observe its obligations to us, the Guarantor(s) agree to perform such obligations on demand and as directed, by us.
- (d) As a separate, primary and severable liability to that of the Sub-contractor and the Guarantor(s) pursuant to clauses 2(c) and 2(e), the Guarantor(s) indemnify us and agree to keep us indemnified against any cost, expense, liability, loss or damage suffered or incurred by us (including legal or enforcement costs on a full indemnity basis) arising out of:
 - (i) a failure by the Sub-contractor or any of the Guarantor(s) to observe or perform their obligations under any of the Documents, or otherwise owed to us;
 - (ii) any obligation of the Sub-contractor or any of the Guarantor(s) under any of the Documents (or other arrangement) being ineffective for any reason whatsoever, including:
 - (1) a legal limitation, disability or incapacity of any of them, or a lack or improper exercise of a power or authority;
 - (2) the Sub-contractor, or any of the Guarantor(s) making an arrangement, assignment or composition for the benefit of the creditors;
 - (3) an order made, or resolution effectively passed, for the winding-up or bankruptcy of the Sub-contractor or any of the Guarantor(s);
 - (4) the Sub-contractor or any of the Guarantor(s) going into liquidation, or a receiver, administrator, provisional liquidator, liquidator, or trustee in bankruptcy being appointed to the Sub-contractor or any of the Guarantors; or
 - (5) any obligation of the Sub-contractor or any of the Guarantor(s) becoming illegal, invalid, void or unenforceable.

3. Continuing Liability

- (a) The Guarantee & Indemnity granted by a Guarantor constitute continuing obligations of that Guarantor and remain in full force and effect until:
 - (i) The Sub-contractor's obligations to us have been paid or performed in full (whether by the Sub-contractor or one or more of the Guarantor(s)); and
 - (ii) We have, in writing, released that Guarantor from the Guarantee & Indemnity for any future obligations of the Sub-contractor.
- (b) Without limiting the generality of clause 3(a), the obligations of a Guarantor pursuant to this Guarantee & Indemnity are not affected, avoided, discharged or released by:
 - (i) any variation in any agreements or arrangements between the Sub-contractor and us;
 - (ii) any part payment of any amounts owed by the Sub-contractor or the Guarantor(s) to us;
 - (iii) insolvency of any of the Guarantor(s) or the Sub-contractor;
 - (iv) any of the Guarantor(s) death or incapacity;
 - (v) us releasing or discharging the Sub-contractor or any of the other Guarantor(s) from their obligations;
 - (vi) us granting any time, waiver, covenant not to sue, indulgence or concession to the Sub-contractor or any of the other Guarantor(s) whatsoever, whether or not an additional burden is imposed to, or making of, an arrangement, compromise, or composition with a person, or compounding a liability, in any way;
 - (vii) laches, acquiescence, delay, omission, mistake or other act by us or any other person or any of them;
 - (viii) any of the Documents, or this Guarantee and Indemnity being or becoming wholly or partially illegal, invalid, void, voidable, unenforceable or otherwise of limited force or effect;
 - (ix) a variation, renewal, amendment or novation or a dealing with this Guarantee and indemnity, or other document, irrespective of whether or not the effect:
 - (1) is material;
 - (2) imposes an additional liability; or
 - (3) is onerous;on the Guarantor or any other person;
 - (x) an invalidity or irregularity in the execution of this Guarantee & Indemnity by the Guarantor, or a deficiency or irregularity in the powers of the Guarantor to enter into, or observe its obligations under this Guarantee & Indemnity;
 - (xi) a judgement against the Guarantor or another person; or
 - (xii) a change in capacity, rights, or obligations of the Guarantor or other person.

(c) Multiple Guarantors

- (a) Where there is more than one Guarantor, this Guaranty & Indemnity applies to bind all such Guarantors jointly, and each of them severally.

5. Enforcement of Guarantee

- (a) We may seek or demand payment of all amounts due by the Sub-contractor, or the performance of the Sub-contractor's obligations, from any one or more of the Guarantor(s) at our sole discretion, regardless of whether or not we have exhausted our remedies, or made any formal claims, or commenced any proceedings, against the Sub-contractor or any of the other Guarantor(s) whatsoever.
- (b) We may enforce this Guarantee & Indemnity against any one or more of the Guarantor(s) as a primary liability, and not as a subordinate or secondary liability (whether to that of the Sub-contractor, or any other Guarantor(s)).

6. No Marshalling

- (a) We are not required to marshal in any of the Guarantor(s)' favour:
- (i) any security we may hold with respect to the Sub-contractor or otherwise; or
 - (ii) any asset which we hold or are entitled to, with respect to the Sub-contractor or otherwise.
- (b) **Security over Land**
- (a) As security for the payment of any amounts payable by the Guarantor(s) to us, and the performance of the Guarantor(s) obligations pursuant to this Guarantee & Indemnity, each Guarantor grants to us a mortgage and/or charge (**Charge**) over any and all interest or estate such Guarantor may have in any real property, whether now or in the future (in this clause 7, **Collateral**).
 - (b) Each Guarantor irrevocably consents to us to register a caveat in relation to the Collateral, if we see fit.
 - (c) Without limiting our rights and interest at law, the Guarantor(s) must not, transfer, sell, grant any rights or interests over, or otherwise deal with any of your rights and interest in the Collateral without our express, prior, written consent.
 - (d) If we register a caveat over the Collateral, when the Guarantor(s) or the Sub-contractor pay us all amounts payable to us, and otherwise discharge, in full, the Sub-contractor's and the Guarantor(s)' obligations, upon request, we will provide the relevant Guarantor(s) with the relevant documentation to remove or discharge any such caveat or other dealing registered over the title to the Collateral.
 - (e) Nothing in this clause 7 obliges us to discharge or remove any interest we register over the title to the Collateral until we have received all amounts due to us in full, and the Sub-contractor and/or Guarantor(s) have otherwise complied with all their obligations that are the subject of this Guarantee & Indemnity.
 - (f) Each Guarantor agrees to pay us, on demand and on a full indemnity basis, all our costs, expenses, disbursements, loss, damage and liability whatsoever (including legal and/or enforcement costs) incurred or paid by us in respect of, or in connection with, the registration, discharge or enforcement of the Charge.
- 8. General Security Interest**
- (a) As security for the payment of any amounts payable by the Guarantor(s) to us, and the performance of the Guarantor(s) obligations pursuant to this Guarantee & Indemnity, each Guarantor grants to us a security interest (**Security Interest**) over all their present and after acquired personal property (in this clause 8, **Collateral**).
 - (b) The Security Interest granted pursuant to clause 8(a):
 - (i) extends to all proceeds of the Collateral; and
 - (ii) to the extent it is necessary to determine the nature of such Security Interest, it is a fixed and floating charge over such Collateral, and any proceeds thereof.
 - (c) The Guarantor(s) must not sell, transfer, encumber, dispose of, grant any rights or interest in or in relation to, or otherwise deal with, any right or interest in any Collateral to which the Security Interest granted pursuant to clause 8(a) applies, except:
 - (i) In the ordinary course of the Guarantor(s)' business, to the extent that such Collateral are 'circulating assets' (as that term is defined in the PPSA); or
 - (ii) With our express, prior written consent.
 - (d) If a Guarantor sells, disposes of, or otherwise deals with the property subject to the Security Interest in any way, such Guarantor holds all proceeds from any disposal or dealing with the property subject to the Security Interest on trust for us, and such proceeds are payable by that Guarantor to us on demand.
 - (e) Without limiting anything else in this Guarantee & Indemnity, each Guarantor consents to us registering the Security Interest granted pursuant to clause 8(a) on the PPSR.
 - (f) Each Guarantor must do all things and sign all documents necessary to:
 - (i) obtain any third party consent to the grant and registration of the Security Interest;
 - (ii) register (or allow the registration of) and maintain registration of any financing statement on the PPSR in relation to such Security Interest;
 - (iii) perfect and keep continuously perfected, the Security Interest;
 - (iv) ensure our priority position in relation to the Security Interest is protected;
 - (v) otherwise allow us to enforce such Security Interest.
 - (g) To the extent permitted by the PPSA, each Guarantor waives their right to receive any notice or copy of any document pursuant to the PPSA, including any verification statement or financing change statement, to reinstate the Security Interest by payment of any amounts owing or by remedy of any default or pursuant to sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 133, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143, unless the notice is required by the PPSA and cannot be excluded.
 - (h) We have all powers granted to us by law, including all rights and powers of secured parties at common law and in the PPSA, to enforce our Security Interest in any way we see fit.
 - (i) In addition to any powers pursuant to clause 8(h), we may at our option:
 - (i) enter, take possession and assume control of the property subject to the Security Interest;
 - (ii) receive profits of the property subject to the Security Interest;
 - (iii) carry on any of the Guarantor(s)' business forming part of, or relating to, the property subject to the Security Interest;
 - (iv) sell or agree to sell any of the property subject to the Security Interest (whether or not we have taken possession) on such terms as we see fit;
 - (v) lease or licence the property subject to the Security Interest, renew, terminate, surrender or accept the surrender of leases or licences, as we see fit;
 - (vi) appoint a receiver and manager on such terms as we see fit; and
 - (vii) make debtors bankrupt, and wind up companies, and otherwise do all things in connection with any bankruptcy or winding up which we think is necessary for the recovery or protection of the property subject to the Security Interest, or any part thereof.
 - (j) Each Guarantor must pay to us, on demand, all costs, expenses and other amounts incurred or paid by us in respect of, or in connection with, the registration, discharge or enforcement of the Security Interest in relation to that Guarantor's property.
- 9. Suspension of Claims**
- (a) Unless and until the Sub-contractor's and Guarantor(s) obligations to us have been performed and discharged in full, each Guarantor irrevocably suspends all rights or claims it may have against the Sub-contractor or any other Guarantor whatsoever (including any right of subrogation), and must not make any claim or demand in that regard, except to give effect to clause 9(b).
 - (b) Unless and until the Sub-contractor's and Guarantor(s) obligations to us have been performed and discharged in full, each Guarantor irrevocably appoints us, and each of our directors and secretaries as that Guarantor's attorney for the purposes of making any claim or demand on behalf of that Guarantor against the Sub-contractor or another Guarantor, and:
 - (i) any person so acting may do (or refrain from doing) anything lawfully permitted to be done by an attorney, despite any conflict of interest;
 - (ii) any person so acting may apply any and all amounts received on behalf of that Guarantor towards the payment of any amounts payable by that Guarantor (and/or the Sub-contractor or any other Guarantor) to us pursuant to the terms of this Guarantee & Indemnity, including any costs, expenses or liability incurred by us or such persons in acting as the Guarantor's attorney; and
 - (iii) that Guarantor irrevocably ratifies all acts of any person so acting pursuant to, and in accordance with, this clause 9(b).
- Warranties**
- (a) Each Guarantor represents and warrants in our favour that they have all necessary power, consents, authority and capacity to enter into this Guarantee & Indemnity and to perform their obligations under it.
 - (b) In addition to clause 10(a), each Guarantor agrees, acknowledges, represents and warrants that:

- (i) they are not agreeing to this Guarantee & Indemnity, or the Documents, as a result of a statement or conduct not expressly included in this Guarantee & Indemnity, or the Documents;
- (ii) they may not request or require us to do anything, including disclosing anything or giving any advice, except as expressly set out in this Guarantee & Indemnity or the Documents;
- (iii) they have read and understand the effect of this Guarantee & Indemnity and the Documents, and do not require us to provide and advice or explanation thereof;
- (iv) they have obtained and relied upon independent legal advice or have had the opportunity to obtain such independent legal advice but have elected not to, in relation to this Guarantee & Indemnity, or the Documents;
- (v) they have not relied upon any advice from us, or our advisors, in relation to this Guarantee & Indemnity or the Documents; and

we may rely on this clause 10(b) if a Guarantor claims that they have entered into this Guarantee & Indemnity and the documents without legal advice, or that they did not understand the nature and effect of this Guarantee & Indemnity and the Documents, whatsoever.

11. Assignment

- (a) We may assign our rights under this Guarantee & Indemnity at any time on terms that we see fit.

12. No Waiver

- (a) We do not waive our rights under this Guarantee & Indemnity unless we give written notice that we waive that right (and such waiver is limited to the instance referred to in such notice).

- (b) A right is not impaired or waived by:
 - (i) a failure to exercise that right;
 - (ii) a delay in exercising that right;
 - (iii) a partial exercise of that right;
 - (iv) a previous exercise of that right; or
 - (v) negotiations between the parties.

13. Severability

- (a) This Guarantee & Indemnity must be read so that its provisions are valid and enforceable. If a provision cannot be read, and to the extent that it is invalid or unenforceable, then:
 - (i) that provision is severed from this Guarantee & Indemnity to the extent necessary to remove the invalidity or illegality; and
 - (ii) the remaining provisions of this Guarantee & Indemnity remain valid and enforceable.

14. Successors

- (a) The rights and obligations of the parties under this Guarantee & Indemnity continue for the benefit, or to bind, the parties and their successors or legal personal representatives.

15. Jurisdiction

- (a) This Guarantee & Indemnity is governed by the laws of the Australian Capital Territory in Australia (**Jurisdiction**), where the Works address is ACT; New South Wales (**Jurisdiction**), where the Works address is NSW; Queensland (**Jurisdiction**), where the Works address is Qld, Victoria, (**Jurisdiction**), where the Works address is Vic.
- (b) The parties irrevocably submit to the jurisdiction and courts of the Jurisdiction.
- (c) No party may challenge or otherwise dispute the jurisdiction of the courts of the Jurisdiction to hear any matter in relation to this Guarantee & Indemnity.

This Privacy Authority sets out the policy for dealing with the Sub-contractor's and/or the Guarantor(s)' personal information by Selected Building Services ABN 93 168 103 080 for the purposes of the Privacy Act 1988 (Cth).

1. Definitions

- (a) **Sub-contractor, you, your** means the Sub-contractor listed in the Sub-contractor Details Form;
- (b) **Documents** means, collectively, this Privacy Authority, Guarantee & Indemnity and the Sub-contractor T&Cs collectively;
- (c) **Guarantee & Indemnity** means the document of that title attached to the Sub-contractor T&Cs;
- (d) **Guarantor(s)** means the person or persons specified in the Guarantor Details Form;
- (e) **Privacy Act** means the Privacy Act 1988 (Cth);
- (f) **Relevant Persons, you, your**, whether capitalised or not, means the Sub-contractor and each of the Guarantor(s);
- (g) **Selected, us, we, our**, whether capitalised or not, means Selected Building Services ABN 93 168 103 080 and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)), agents, employees, contractors, officers, directors and representatives whatsoever;
- (h) **Sub-contractor T&Cs or T&Cs** means the document titled "Sub-contractor Terms and Conditions", and any annexures, schedules or attachments to it, including this Privacy Authority;
- (i) **Trade Referrals** means the Trade Referrals listed in the Sub-contractor Details Form.

2. Commencement

- (a) This Privacy Authority commences when you execute the Documents, regardless of whether or not any one or more of the other parties have executed the same.

3. Collection of Personal Information

- (a) We will collect information about you (from the Sub-contractor Details Form, the Guarantor Details Form or otherwise) to process the Sub-contractor's application to commence trade, or obtain credit, from us, and to maintain such account.
- (b) You and the Guarantors consent to us making such enquiries as we deem in our absolute discretion necessary for the purposes of determining whether or not to approve the Sub-contractor, including, but not limited to:
 - (i) obtaining information about you from the Trade Referrals in relation to your dealings with them, for the purposes of assessing your credit-worthiness;
 - (ii) obtaining reports from credit providers or credit reporting agencies; in relation to your commercial activities or credit worthiness, including any information as to your credit history, standing, capacity, or any other thing that credit providers or credit reporting agencies, are allowed to give or receive.

4. Use of Personal Information

- (a) You irrevocably consent to us using any personal information about you for the purposes of assessing whether or not to commence trading with the Sub-contractor, or otherwise extending credit to the Sub-contractor.
- (b) You irrevocably consent to us disclosing any information about you for the following purposes:
 - (i) to obtain any further information about you pursuant to clause 2 (including for identification purposes);
 - (ii) to allow any credit reporting agency to create or maintain a credit information file containing information about you; provided such information so disclosed is limited to:
 - (iii) particulars as to your identity (e.g. name, address, date of birth, identification document number);
 - (iv) the Sub-contractor's application for credit (i.e. that the Applicant has applied for credit, and the amount);
 - (v) the fact that we may be providing credit to the Sub-contractor;
 - (vi) any amounts due which are overdue by more than 60 days, and for which debt collection action has started;
 - (vii) advising that any amounts which have been previously recorded as overdue are no longer overdue;
 - (viii) information that, in our reasonable opinion, shows that you have committed a serious infringement or dishonest act, with respect to credit (e.g. acting fraudulently, or displaying an intention not to comply with your obligations);
 - (ix) information as to any dishonoured payments of \$100 or more, which have been dishonoured more than once; and
 - (x) any information permitted to be disclosed pursuant to the Privacy Act.

5. Storage of Personal Information

- (a) We will store your personal information in our secure electronic database and/or in hard copy in locked and secure locations with restricted access.
- (b) We will undertake all reasonable precautions to safeguard your personal information from loss, misuse, unauthorised access, modification or disclosure.

6. Request for Access

- (a) You may access the personal information we have about you, and seek correction of such information, by contacting us directly.

7. Further Information

- (a) You may obtain further information about your rights in relation to personal information via our privacy policy on our website (if any) or the Office of the Australian Information Commissioner, whose website is as follows: www.oaic.gov.au.