

SMALL BUSINESS MINOR WORKS AND SUPPLY SUBCONTRACT- CONSTRUCT ONLY

SUBCONTRACT PARTICULARS

Dated this day of 2021.

Order No. / Contract No. – 231780/365

(this number MUST be quoted on all invoices)

BETWEEN:

CONTRACTOR: Joe's Blocks & Bricks
ABN: 12 123 456 789
ADDRESS: 7/104 Gympie Road, Stathpine QLD 4500
PHONE: 07 3881 0311
FAX: 07 3881 0312

AND

SUBCONTRACTOR: [Melissa Robertson]
ABN: [35 321 321 380]
ADDRESS: [4 Barcoo Street, Burpengary QLD 4505]
PHONE: [0432 688 658]
FAX: [07 1234 5678]
EMAIL: [melissarobertson1988@outlook.com]
LICENCE NO: [1234567]

SUBCONTRACT PARTICULARS

- 1 **Principal:** Melissa Robertson
- 2 **Project:** (Description) Brickwork for a two story residential dwelling
- 3 **Site:** (Address) 8 Rees Court, Palm Beach QLD
- 4 **Date for Commencement of Works:** 19th July 2021
- 5 **Date for Delivery:** 30th July 2021
- 6 **Date for Practical Completion:** 30th July 2021
- 7 **Subcontract Sum:** \$1,656.00
- 8 **Security:** 2.5% retention \$41.40
- 9 **Liquidated Damages:** [\$50.00] per day after the Date for Delivery AND/OR [\$50.00] per day after the Date for Practical Completion
- 10 **Brief description of the Materials/Works:** Supply and install blockwork including all materials, scaffolding to a standing height of 3m and all labour and materials required.
- 11 **Insurance by Subcontractor:**
Public liability \$20,000,000.00 to be maintained until Practical Completion
Subcontract Works / Risk Policy \$1,656.00 to be maintained until Practical Completion
WorkCover, Workers Compensation or any other insurance required under statute.
- 12 **Subcontract Documents:** (and to the extent of any ambiguity, discrepancy or inconsistency in or between the Subcontract Documents have the order of precedence as listed):
 1. Subcontract Particulars
 2. Subcontract Conditions
 3. Schedule 1 to the Subcontract
 4. Schedule 2 to the Subcontract
 5.
 6.
 7.Note: list relevant drawings and specifications. If not enough space – list in attachment
- 13 **Times for payment claims prior to Practical Completion:** Material Deposit of 10% \$165.60 on commencement with balance less retention \$1,449.00 paid on completion.
- 14 **Agreed percentage for loss of profit upon termination for convenience:** 30%
- 15 **Building Code 2016:** Applicable Yes

Note: if applicable, then special conditions contained in Schedule 2 apply to the Subcontract.

Executed on behalf of **Melissa Robertson** by its duly authorised representative:

Executed on behalf of **[Joe's Blocks & Bricks]** by its duly authorised representative

.....
Name of authorised representative

.....
Signature

.....
Name of authorised representative

.....
Signature

SUBCONTRACT CONDITIONS

1. DEFINITIONS

In the Subcontract except where the context otherwise requires:

"Business Day" means a day that is not a Saturday or Sunday, or a public holiday, special holiday or bank holiday in the place where the Site is located;

"claim" means any claim for an entitlement to an extension of time, an adjustment to the Subcontract Sum or the recovery of cash, expenses, damages, liabilities or other amounts under the Subcontract or otherwise;

"Contractor's Construction Program" means the document or documents setting out the program of Head Contract Works to achieve practical completion under the Head Contract which the Subcontractor acknowledges has been made available for inspection and review;

"Date for Commencement" means the date stated in the subcontract particulars or such other date nominated by the Contractor in writing;

"Date for Delivery" means the date stated in the subcontract particulars;

"Date for Practical Completion" means the date stated in the subcontract particulars, as adjusted in accordance with the Subcontract;

"day" means calendar day;

"Defects Liability Period" means the period commencing on the date of Practical Completion and ending on the date of expiry of the last defects liability period under the Head Contract;

"Direct" or **"Direction"** includes any direction, instruction or communication from the Contractor to the Subcontractor;

"Head Contract" means the contract between the Principal and the Contractor for the execution of the Project;

"Head Contract Works" means the works to be carried out by the Contractor under the Head Contract and includes temporary works and constructional plant;

"Materials" means those goods, materials, parts or other tangible items to be provided by the Subcontractor in accordance with the Subcontract, a brief description of which is contained in the subcontract particulars;

"month" means calendar month;

"Practical Completion" is that stage in the execution of the Works when the Works are complete except for minor defects and/or omissions that do not prevent the Works from being capable of being used for their intended purpose;

"Principal" means the person or entity stated in the subcontract particulars being the principal under the Head Contract;

"Project" means the whole of the work to be carried out and completed by the Contractor under the Head Contract, which is briefly described in the subcontract particulars;

"Qualifying Cause of Delay" means any cause which is not reasonably foreseeable and outside the control of a competent and experienced subcontractor;

"Security Interest" has the same meaning as under the PPSA;

"Site" means the address in the subcontract particulars;

"Subcontract" means the agreement between the Contractor and the Subcontractor as detailed in the subcontract particulars;

"Subcontract Documents" means the documents listed in the subcontract particulars;

"Subcontract Sum" means the lump sum payable to the Subcontractor by the Contractor, as adjusted in accordance with the Subcontract, as set out in the subcontract particulars;

"the Works" means the whole of the work to be designed and carried out and completed by the Subcontractor in accordance with the Subcontract, a brief description of which is contained in the subcontract particulars, and includes supply of the materials and all services reasonably necessary for, incidental to or can be reasonably inferred from the supply of the Materials;

"Variation" means to vary the Works by changing, adding to or omitting from the Works under clause 7.

2. APPLICATION OF THE SUBCONTRACT

- (a) The Subcontractor warrants that at the time of execution of this Subcontract it is a business that employs fewer than 20 persons.
- (b) The Subcontractor acknowledges that the Contractor enters into this Subcontract in reliance upon the Subcontractor's warranty under clause 2(a).

3. OBLIGATIONS OF THE PARTIES

- (a) The Subcontractor shall carry out and complete the Works:
 - (i) in a proper and tradesperson like manner;
 - (ii) in accordance with the Subcontract and the Contractor's Directions;
 - (iii) in accordance with all legislative requirements including any relevant Australian Standards applicable to the Works;
 - (iv) using materials that are new, free of defects and of the highest quality for the purpose or application required; and
 - (v) by the Date for Practical Completion.
- (b) The Subcontractor must satisfy itself as to:
 - (i) the accuracy or suitability of the documents comprising the Subcontract; and
 - (ii) the suitability of the Site, including any natural or artificial subsurface, surface or physical conditions in, on or above the Site,and shall not be entitled to make any claim against the Contractor in relation to the Subcontract or the Site.

4. MATERIALS

- (a) The Materials shall, unless otherwise stated in the Subcontract, be:
 - (i) in a form or deliverable state as required by the Contractor;
 - (ii) of merchantable quality, new and free from defects;
 - (iii) fit and suitable for their purpose; and
 - (iv) free and clear of all charges, liens, encumbrances and the Subcontractor must have good title to them.
- (b) The Subcontractor shall deliver the Materials by the Date for Delivery.
- (c) All Materials must be suitably packed or otherwise prepared for delivery at the Subcontractor's own cost, and Materials are to be delivered to the Place of Delivery free of all freight, delivery and insurance charges, which are to be to the Subcontractor's account.
- (d) All Materials, whether paid for or not, are subject to inspection by the Contractor's authorised representative, either before or after delivery. If the Materials do not conform to the requirements of the Subcontract, the Contractor may, in its discretion, Direct the Subcontractor to rectify the Materials or reject all or any of the Materials. The Contractor retains the right to recover from the Subcontractor compensation in respect of any rejected Materials. All rejected Materials subsequent to delivery will be returned at the Subcontractor's expense unless picked up by the Subcontractor within 7 days of being notified of the rejection.
- (e) Delivery of the Materials will be deemed to occur when the Materials have been delivered to the Site, or such other place as Directed by the Contractor, and the Contractor has given the Subcontractor a written notice that the Materials are acceptable.
- (f) The Materials are at the Subcontractor's risk until delivery.
- (g) Title to the Materials passes to the Contractor on the earlier of the date of payment or delivery of the Materials.
- (h) Where the Contractor receives title to the Materials or part thereof before possession of the Materials, the Subcontractor warrants that the Materials will be free from all Security Interests held by the Subcontractor or a third party when it enters the Contractor's possession.
- (i) The Supplier shall, if requested by the Contractor, ensure that any registered Security Interest in the Materials or part thereof in breach of clause 4(h) is removed from the Personal Property Securities Register.

5. DOCUMENTS AND INTELLECTUAL PROPERTY

- (a) Documents provided by the Contractor under the Subcontract or otherwise remain the Contractor's property and shall be returned to the Contractor on demand.
- (b) The Contractor retains all intellectual property in the documents. The Contractor grants to the Subcontractor a licence to use the documents to carry out the Works and any

rectification, maintenance or servicing as necessary for the purposes of the Subcontract.

- (c) The Subcontractor shall not use, copy or reproduce the documents provided by the Contractor for any purpose other than the Works.

6. DIRECTIONS

- (a) Subject to the Subcontract, the Contractor may from time to time give a Direction to the Subcontractor in connection with the carrying out of the Works, and the Subcontractor shall comply with the Direction.
- (b) A Direction may be given orally, however, where given orally the Contractor shall give the Subcontractor written confirmation within 3 Business Days.

7. VARIATIONS

- (a) The Subcontractor shall not vary the Works except in accordance with the Contractor's written Direction.
- (b) The Subcontractor may request a Variation, however for a Variation for the convenience of the Subcontractor the Subcontractor shall not be entitled to either extra time or extra money.
- (c) The price for a Variation is to be as agreed or if not agreed as determined by the Contractor using:
 - (i) where the Subcontract prescribes specific rates or prices, applying those rates or prices;
 - (ii) where the Subcontract includes a schedule of rates, using those rates or prices to the extent that it is reasonable to use them; then
 - (iii) to the extent that neither clauses 7(c)(i) and 7(c)(ii) applies, a fair and reasonable valuation of the price of the Variation, including a reasonable amount for the Subcontractor's profit and overheads.
- (d) If the Subcontractor disputes the price of a Variation, the dispute may be referred to dispute resolution within 10 Business Days of the Contractor providing to the Subcontractor written notice of the price.
- (e) If the Subcontractor fails to refer the Variation to dispute resolution within the time period specified in this clause, then the Subcontractor is barred from disputing the price.

8. SECURITY

- (a) Security shall be provided in the form specified in the subcontract particulars or such other form reasonably acceptable to the Contractor.
- (b) The Contractor may have recourse to security where an amount that is due to the Contractor by the Subcontractor remains unpaid after the time for payment and where the Contractor has given the Subcontractor at least 5 Business Days' notice of its intention to have recourse.
- (c) The Contractor shall release 50% of security held within 14 days of Practical Completion being achieved.
- (d) Subject to any right under clause 8(b), the balance of any remaining security shall be claimed by the Subcontractor at the time for making its final progress claim under clause 10.
- (e) This clause survives the termination or expiration of this Subcontract.

9. PAYMENT

- (a) From the Date for Commencement and prior to Practical Completion, the Subcontractor shall submit payment claims at the times specified in the subcontract particulars.
- (b) All progress claims shall be submitted to the Contractor in a valid individually numbered GST tax invoice format and shall include:
 - (i) a notice of acceptance for the Materials or part thereof claimed by the Subcontractor;
 - (ii) details of the actual cost of work carried out by the Subcontractor up to and including the date the Subcontractor submits its claim;
 - (iii) details of the amounts otherwise due from the Contractor to the Subcontractor or from the Subcontractor to the Contractor;
 - (iv) details of amounts claimed for Variations;
 - (v) copies of tax invoices for any outlays claimed; and
 - (vi) a declaration as to payment of contractors, workers and suppliers in the form required by the Contractor.

- (c) On receipt of a progress claim which is compliant with this clause 9, the Contractor shall:

- (i) issue a progress certificate assessing the amount owing within 10 Business Days (**Scheduled Amount**); and
 - (ii) pay the Scheduled Amount to the Subcontractor within 25 Business Days after receipt of the progress claim.

- (d) Except for final payment, payment by the Contractor of any progress claim shall be a payment on account only and not evidence that the work has been carried out satisfactorily.
- (e) The Contractor may set-off or deduct from any moneys due to the Subcontractor any moneys due from the Subcontractor to the Contractor under the Subcontract. The provisions of this clause 9(e) will survive the termination or expiration of the Subcontract.

10. FINAL ACCOUNT

- (a) The Subcontractor shall submit its final progress claim within 10 Business Days of the date of expiry of the last Defects Liability Period. In addition to the requirements in clause 9, the final progress claim is to be endorsed "Final Progress Claim" and is to include a final statement setting out the details of all moneys claimed or owing by the Subcontractor under, or in connection with, the subject matter of the Subcontract.
- (b) If the final progress claim is not provided, is incomplete or is false the Contractor may withhold the payment in full until a complying final progress claim is received.
- (c) The Contractor shall issue a final certificate assessing the claim within 10 Business Days and make payment of the amount assessed within 25 Business Days of receipt of the final progress claim.
- (d) The final certificate shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the Subcontract, except for:
 - (i) fraud or dishonesty relating to the Works or any matter dealt with in the final certificate;
 - (ii) any defect or omission in the Works which was not reasonably apparent at the end of the last Defects Liability Period;
 - (iii) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or any arithmetical error in any computation; and
 - (iv) unresolved issues which have been referred to the dispute resolution processes under clause 23 of the Subcontract before the issue of the final certificate.

11. DEFECTS

- (a) The Subcontractor shall rectify at its own cost any part of the Works that is defective (including omitted).
- (b) As soon as reasonably possible after Practical Completion the Subcontractor shall rectify all defects existing at Practical Completion.
- (c) At any time prior to the expiration of the Defects Liability Period, the Contractor may give the Subcontractor a Direction to rectify a defect (including a defect in the Materials) within a reasonable time period. The Subcontractor shall carry out rectification as Directed and at times and in a manner causing as little inconvenience to the occupants or users of the Project as is reasonably possible.
- (d) If the rectification is not carried out as Directed, the Contractor may have the rectification carried out by others and the costs incurred shall be a debt due and payable by the Subcontractor to the Contractor.

12. INDEMNITY AND INSURANCE

- (a) The Subcontractor indemnifies the Contractor against:
 - (i) loss or damage to any property and claims in respect of personal injury or death arising out of, connected to, or as a consequence of, the Subcontractor carrying out or failing to carry out the Works or breaching this Subcontract; and
 - (ii) any costs, losses or damages that the Contractor pays or becomes liable to pay under the Head Contract but only to the extent that such payment or liability arises out of the Subcontractor's failure to comply with the Subcontract.
- (b) The Subcontractor shall effect and maintain the insurance specified in the subcontract particulars and each policy of insurance shall be on the terms reasonably satisfactory to the

Contractor and, other than workers' compensation insurance, name the Contractor as an insured. If the Subcontractor fails to effectively maintain the insurance the Contractor may do so and the cost shall be a debt due and payable by the Subcontractor to the Contractor.

- (c) The Subcontractor shall, within 3 Business Days of the Contractor's request, give evidence of the insurance required to be effected and maintained. Evidence of insurance is a precondition to payment and the Contractor may withhold payment in full until such time as satisfactory evidence is given.
- (d) The Subcontractor shall, where there is a claim on any insurance policy under the Subcontract and before there is any entitlement in the Subcontractor to claim under the insurance of any other party, pursue a claim under the Subcontractor's insurance for the full extent of the Subcontractor's liability.
- (e) The Subcontractor shall, where there is a claim on any insurance policy for loss or damage for which it is responsible, bear the cost of any deductible pursuant to the relevant insurance policy.
- (f) The Subcontractor shall ensure that all secondary subcontractors of the Subcontractor have insured against liability for death of, or injury to, themselves or their workers including liability under statute and at general law.

13. CARE OF WORKS

The Subcontractor is responsible for care of the Works from and including the Date for Commencement until 4:00 pm on the date of Practical Completion.

14. CLEANING

The Subcontractor shall keep the whole of the area of the Works clean and tidy and is responsible for the daily removal of all rubbish and materials. If the Subcontractor fails to comply with this requirement, the Contractor may Direct the Subcontractor to rectify the non-compliance and a reasonable time for rectification. If the rectification is not carried out as Directed, the Contractor may have the rectification carried out by others and the costs incurred shall be a debt due and payable by the Subcontractor to the Contractor.

15. TIME AND PROGRESS

- (a) Each party shall promptly give notice to the other after becoming aware of anything which will probably cause delay to the Works.
- (b) The Subcontractor shall be entitled to make a written claim for an extension of time ("EOT") if the Subcontractor is, or will be, delayed in achieving Practical Completion by a Qualifying Cause of Delay. The written claim must:
 - (i) identify the cause of the delay;
 - (ii) the estimated duration of the delay and overall impact on Practical Completion; and
 - (iii) be given to the Contractor within 5 Business Days of the Subcontractor becoming aware of the delay.
- (c) Within 10 Business Days of receiving the Subcontractor's claim for an EOT, the Contractor shall give the Subcontractor a written notice assessing the EOT claim.
- (d) If the Subcontractor does not comply strictly with the requirements of this clause, it shall not be entitled to make a claim, nor be granted an EOT.

16. LIQUIDATED DAMAGES

If the Materials are not delivered by the Date for Delivery and/or the Works do not reach Practical Completion by the Date for Practical Completion, the Contractor is entitled to liquidated damages as specified in the subcontract particulars for every day after the Date for Delivery or the Date for Practical Completion, as applicable, up to and including the date of delivery or Practical Completion, termination of the Subcontract or work being taken out of the Subcontractor's hands. The amount calculated shall be a debt due and payable by the Subcontractor to the Contractor.

17. COMPLIANCE WITH STATUTES

- (a) The Subcontractor shall comply with all legislative requirements relating to the Works, including any direction from a local authority or other body having jurisdiction over the carrying out of the Works.
- (b) In performing the Works, the Subcontractor shall be responsible for ensuring that the Subcontractor and its employees and/or secondary subcontractors complete the work under the

Subcontract safely and in accordance with all legislative requirements.

- (c) The Subcontractor indemnifies the Contractor against all loss, damage, expenses or costs incurred or suffered by the Contractor arising out of or in connection with a breach of the Subcontractor's statutory and contractual obligations under clause 17.

18. ASSIGNMENT

The Subcontractor shall not assign the Subcontract or any right, benefit or interest under the Subcontract or subcontract any part of the Works without the Contractor's written approval, which is not to be unreasonably withheld.

19. HOURS OF WORK

- (a) Unless stated elsewhere, working hours and working days shall be as notified by the Contractor to the Subcontractor.
- (b) The Subcontractor shall consider any request by the Contractor with respect to working hours including the working of a six day week.

20. DEFAULT AND TERMINATION

- (a) If either party commits any substantial breach of the Subcontract, the other party may issue a notice to show cause to the party in breach requiring the party to show cause why the party giving the notice should not terminate the Subcontract.
- (b) If that party fails to show reasonable cause notice within 5 Business Days of receipt of the notice, the party giving the notice to show cause may, by further notice in writing, terminate the Subcontract.
- (c) Where the Subcontractor fails to show reasonable cause the Contractor may by written notice to the Subcontractor take out of the Subcontractor's hands the whole or part of the Works remaining to be completed and suspend payment.
- (d) Where Works are taken out of the Subcontractor's hands or the Subcontract is terminated and as a result, the Contractor incurs additional costs, those costs shall be a debt due and payable by the Subcontractor to the Contractor.
- (e) If the Head Contract is ended for any reason the Contractor may terminate the Subcontract on the giving of written notice of termination and the Subcontractor is entitled to make its final progress claim under clause 10 as at the date of termination. The Subcontractor is not entitled to any other claim, including any claim for loss of profits, costs, losses, damages or expenses suffered or incurred, other than those amounts payable under this clause 20(e).

21. TERMINATION FOR CONVENIENCE

The Contractor may terminate the Subcontract for any reason by giving the Subcontractor written notice, after which the Subcontract is ended and the Contractor shall pay to the Subcontractor:

- (a) the amount due to the Subcontractor evidenced by all unpaid certificates;
- (b) the cost of materials and equipment reasonably ordered by the Subcontractor and its employees engaged in the Works and which the Subcontractor is liable to accept, but only if they will become the Contractor's property upon payment; and
- (c) the costs reasonably incurred:
 - (i) removing any temporary works and plant;
 - (ii) returning to their place of engagement the Subcontractor and its employees engaged in the Works at the date of termination; and
 - (iii) by the Subcontractor in expectation of completing the Works and not included in any other payment;
- (d) an amount for loss of profit equal to the percentage specified in the subcontract particulars applied to the unpaid portion of the Subcontract Sum at the date of termination.

The Subcontractor is not entitled to any other claim in relation to such termination other than those amounts payable under this clause.

The Subcontractor shall:

- (e) on the day of termination cease carrying out the Works;
- (f) if directed by the Contractor to do so:
 - (i) assign or novate in favour of the Contractor any sub-agreements (including without limitation for the provision

of any materials) or rights under any sub-subcontract entered into or obtained by the Subcontractor in connection with the Works; and

- (ii) terminate any other sub-subcontract and recover from any secondary subcontractor any property, documents, material or information of the Contractor.

in each case, with effect on and from the date of termination.

- (g) on or before the date of termination, deliver to the Contractor all property, documentation or information of the Contractor provided to the Subcontractor in connection with the Works; and
- (h) on or before the date of termination, deliver to the Contractor any of the materials or the Works which under the Subcontract have become the property of the Contractor.

This clause 21 survives the termination or expiration of this Subcontract.

22. INSOLVENCY

If either party:

- (a) being a person, becomes bankrupt or makes an assignment of its estate for the benefit of its creditors;
- (b) being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed or takes or has taken or instituted against it any action which may result in the liquidation of the company or if it enters into any agreement with its creditors,

the other party may, without issuing a notice to show cause, terminate the Subcontract by written notice.

23. DISPUTE RESOLUTION

- (a) Either party may, by written notice to the other party, refer any dispute between the parties on any matter or thing in connection with the subject matter of the Subcontract to dispute resolution.
- (b) Prior to any referral of a dispute to dispute resolution, the chief executive officers of either parties, or their duly authorised representatives, are to meet and attempt to resolve the dispute.
- (c) If the dispute is not resolved within 10 Business Days, the parties shall agree to appoint an expert to make a determination within 5 Business Days of the meeting.
- (d) If the parties cannot agree on an expert within 5 Business Days an expert shall be appointed by an authorised officer of the local chapter of RICS Dispute Resolution Service.
- (e) In making a determination the expert shall:
 - (i) give due weight to any written submissions or representations made by either party and within any reasonable time limit prescribed by the expert;
 - (ii) give written reasons for his decision; and
 - (iii) act as an expert not as an arbitrator.
- (f) In the absence of any manifest error and if neither of the parties has taken any steps to enforce a right or remedy by instituting proceedings within 28 days of the written decision of the expert, the decision of the expert shall be final and binding.
- (g) The cost and expense of the expert determination shall be borne equally by the parties.

24. GOODS AND SERVICES TAX (GST)

- (a) It is agreed that the Subcontract Sum is exclusive of GST.
- (b) Notwithstanding any other clause in the Subcontract, if any supply made under or in connection with the Subcontract constitutes a taxable supply, then the recipient of the supply of goods or services ("**the Recipient**") shall determine and pay to the supplier of the goods or services ("**the Supplier**") the amount of GST required to be accounted for by the Supplier to the Commissioner of Taxation in respect of the supply in addition to any amount or consideration expressed as payable elsewhere in the Subcontract.

25. DEED OF GUARANTEE AND INDEMNITY

It is a precondition to this Subcontract that the Subcontractor give to the Contractor a duly executed Deed of Guarantee and Indemnity as set out in Schedule 1 from the Subcontractor's Directors.

Schedule 1
Deed of Guarantee and Indemnity for Subcontractor's Directors

THIS DEED OF GUARANTEE AND INDEMNITY is dated the _____ day of _____ 20....

BY [Joe Moe] (*Guarantor*)
IN FAVOUR OF (Joe's Blocks & Bricks)

INTRODUCTION:

- A** The *Guarantor* is a director of [Joe's Blocks & Bricks] (ACN: [123 459 789]) (**the *Subcontractor***).
- B** *Melissa Robertson* and the *Subcontractor* have entered into a subcontract for the performance of construction work by the *Subcontractor* at [Lot 8 Rees Court, Palm Beach QLD] (**the *Project***) (**the *Subcontract***).
- C** The *Guarantor* is aware of the *Subcontractor's* obligations to *Melissa Robertson* under the *Subcontract* and agrees to provide this guarantee with respect to the *Subcontractor's* performance of its obligations to *Melissa Robertson* on the terms and conditions of this deed.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Business Day means any day which is not a Saturday, Sunday or public or bank holiday in the place in which the Project is located;

Corporations Act means the *Corporations Act 2001* (Cth);

Fully Enforceable means:

- (a) enforceable in accordance with the terms of the *Subcontract* against the *Subcontractor*; and
- (b) not open to disclaimer by any liquidator appointed to the *Subcontractor* under Part 5.6 of the *Corporations Act*;

Guaranteed Money means all:

- (a) present or future indebtedness of the *Subcontractor* to *Melissa Robertson* either alone or in conjunction with any other person under the *Subcontract* or on any account whatsoever; and
- (b) other liabilities of the *Subcontractor* to *Melissa Robertson*, present or future, actual or contingent (including, without limitation, liabilities as surety or guarantor);

Guaranteed Obligations means all the *Subcontractor's* obligations under the *Subcontract* or arising out of, or in connection with, the subject matter of the *Subcontract*, including without limitation, all obligations arising out of the *Subcontractor's* performance of the *Subcontract*.

Loss includes a loss, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment;

1.2 Interpretation

In this deed, unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes:
 - (i) any statutory modification or substitution of that legislation or legislative provision; and
 - (ii) any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as statutorily modified or substituted;
- (c) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (d) the **introduction** forms part of this deed;
- (e) a reference to a **person** includes that person's successors and permitted assignees and novatees;
- (f) **including** and **includes** are not words of limitation;
- (g) a word that is derived from a defined word has a corresponding meaning;
- (h) **monetary amounts** are expressed in Australian dollars;

- (i) the singular includes the plural and vice-versa;
- (j) words importing one gender include all other genders;
- (k) a reference to a thing includes each part of that thing; and
- (l) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 GUARANTEE AND INDEMNITY

2.1 Undertaking

The *Guarantor* unconditionally guarantees to *Melissa Robertson* the due and punctual:

- (a) payment of all the *Guaranteed Money*;
- (b) performance of all of the *Guaranteed Obligations*.

2.2 Enforcement

- (a) If the *Subcontractor* fails to perform or observe any *Guaranteed Obligation*, *Melissa Robertson* may at any subsequent time give the *Guarantor* written notice of the *Subcontractor's* failure.
- (b) If within 10 *Business Days* of the giving that notice, the *Subcontractor* has failed to remedy the failure, the *Guarantor* must (without further notice from *Melissa Robertson*) immediately perform or observe that *Guaranteed Obligation* or otherwise procure its performance or observance.

2.3 Indemnity

The *Guarantor* unconditionally indemnifies *Melissa Robertson* against any claim, *Loss* or damage caused by, or resulting from, the:

- (a) *Subcontractor's* failure to perform the *Guaranteed Obligations*;
- (b) *Guaranteed Obligations* being unenforceable in whole or in part; or
- (c) *Guaranteed Money* being, in whole or in part, not recoverable from the *Subcontractor*, or having been recovered, if they are repaid or restored for any reason.

3 CONSEQUENCES OF DEFAULT BY SUBCONTRACTOR

- (a) If the *Subcontractor* defaults in the due and punctual payment of the *Guaranteed Money*, or any part of them, the *Guarantor* shall pay those moneys on demand to, or as directed by, *Melissa Robertson*.
- (b) If the *Subcontractor* defaults in the due and punctual performance of any of the *Guaranteed Obligations*, or the *Guarantor* is otherwise required to indemnify *Melissa Robertson* against claim, *Loss* or damage under clause 2.3, the *Guarantor* shall pay the amount of any claim, *Loss* or damage on demand to, or as directed by, *Melissa Robertson*.
- (c) The *Guarantor* is deemed to be a principal debtor jointly and severally liable with the *Subcontractor* to discharge the *Guaranteed Obligations*.

4 GUARANTOR'S OBLIGATIONS

The *Guarantor's* obligations under this deed:

- (a) are principal obligations and not ancillary or collateral to any other obligation;
- (b) may be enforced against the *Guarantor* without *Melissa Robertson* being required to exercise any right, power or remedy it may have against the *Subcontractor*;
- (c) are not affected by any act, omission, matter or thing which but for this clause might affect the *Guarantor's* obligations in whole or in part, including without limitation any one or more of the following (whether occurring with or without the consent of any person):
 - (i) the grant to the *Subcontractor* or any other person of any waiver or other indulgence or concession or a whole or partial discharge or release of the *Subcontractor* or any other person,
 - (ii) the bankruptcy or death of, the winding up of, or the appointment of an administrator, receiver or provisional liquidator to, the *Subcontractor* or any other person;
 - (iii) the fact that *Melissa Robertson* or any other person exercises or refrains from exercising any right, power or remedy under the *Subcontract* or otherwise, or fails to recover, by exercise of any such right, power or remedy, any moneys due or payable from the *Subcontractor* to *Melissa Robertson*;
 - (iv) failure by *Melissa Robertson* to give notice to the *Guarantor* of any breach by the *Subcontractor* of the terms of the *Subcontract*;

- (v) the making, variation, replacement, discharge or transfer of any agreement, transaction or arrangement between the *Subcontractor* and *Melissa Robertson*, including the *Subcontract*, or *Melissa Robertson* and the *Guarantor*;
- (vi) completion of the building work the subject of the *Subcontract*;
- (vii) termination of the *Subcontract* by either *Melissa Robertson* or the *Subcontractor*; or
- (viii) the *Subcontractor's* obligations under the *Subcontract* being or becoming wholly or partially illegal, void, voidable or unenforceable.

5 EXTENT OF GUARANTEE AND INDEMNITY

5.1 Continuing guarantee

This deed is a continuing guarantee and indemnity and will remain in full force and effect until all of the *Guaranteed Obligations* have been fulfilled.

5.2 Principal and independent obligation

The undertaking and indemnity in this deed is a principal and independent obligation of the *Guarantor* and is not ancillary or collateral to any other obligation.

6 VARIATION

This deed extends to cover the *Subcontract* as amended, varied or replaced at any time including, without limitation, any increase in the obligations of the *Guarantor* or the *Subcontractor* in consequence.

7 LIMITATION ON LIABILITY

Despite anything to the contrary in this deed, the liability of the *Guarantor* under this deed will be no greater than it would have been if:

- (a) the *Guarantor* was named as a party to the *Subcontract* in place of the *Subcontractor*; and
- (b) the *Subcontract* was fully enforceable.

8 WAIVER OF RIGHTS OF GUARANTOR

The *Guarantor* waives in favour of *Melissa Robertson* all rights (whether at law or otherwise) against the *Subcontractor* so far as necessary to give effect to this deed.

9 EXCLUSION OF SUBROGATION AND OTHER RIGHTS

The *Guarantor* must not, either directly or indirectly, until the *Guaranteed Obligations* have been performed or observed in full:

- (a) claim, exercise or attempt to exercise a right of set-off or counterclaim or any other right or raise any defence of itself or the *Subcontractor* which might reduce or discharge its liability under this deed;
- (b) call on *Melissa Robertson* to sue or take proceedings against the *Subcontractor*; and
- (c) claim to be entitled to the benefit of any security or guarantee now or subsequently held for the *Guaranteed Obligations* by the *Melissa Robertson*, whether by way of contribution, indemnity, subrogation, marshalling or otherwise.

10 GENERAL PROVISIONS

10.1 Entire agreement

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

10.2 Variation

This deed must not be varied except by a later written document executed by all parties.

10.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

10.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

10.5 Governing law and jurisdiction

- (a) The laws applicable in the jurisdiction of the place in which the Project is located govern this deed.

- (b) The parties submit to the non-exclusive jurisdiction of the courts of that place and any courts competent to hear appeals from those courts.

10.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

10.7 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

10.8 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the expiration or termination of this deed for any reason will not merge on the occurrence of that event but will remain in full force and effect.

10.9 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

10.10 Notices

Any notice, demand, consent, approval, request or other communication (**notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered;
- (b) sent by facsimile transmission; or
- (c) sent by prepaid ordinary mail within Australia.

A notice is given if:

- (c) hand delivered, on the date of delivery;
- (d) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted but, if the transmittal is recorded as after 5.00pm in the place in which the Project is located, it is taken to be given on the next Business Day; or
- (e) sent by prepaid ordinary mail within Australia, on the date that is 3 Business Days after the date of posting.

Execution page

EXECUTED as a deed

SIGNED SEALED AND DELIVERED)
by **[Joe Moe]** in the presence of:)
)

.....
Signature of Witness

.....
Signature

.....
Name of Witness

.....
Name of signatory

SIGNED SEALED AND DELIVERED)
by **[INSERT NAME OF DIRECTOR]** in the presence)
of:)

.....
Signature of Witness

.....
Signature

.....
Name of Witness

.....
Name of signatory

EXECUTED by *Melissa Robertson* **PTY LTD ACN**)
009 778 330 in accordance with section 127 of the)
Corporations Act:)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

Schedule 2 – Building Code 2016 Special Conditions

If indicated as applicable in the subcontract particulars, the Subcontractor must comply with the conditions specified in this Schedule 2.

1 Building Code 2016

1.1 Definitions

For the purpose of this clause:

ABCC means the body referred to in subsection 29(2) of the *Act*;

ABC Commissioner means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the *Act*;

Act means the *Building and Construction Industry (Improving Productivity) Act 2016*;

Building Code means the *Code for the Tendering and Performance of Building Work 2016*, which is available at <https://www.legislation.gov.au/Details/F2016L01859>;

Building Contractor has the same meaning as in the *Act*;

Building Industry Participant has the same meaning as in the *Act*;

Building Work has the same meaning as in subsection 3(4) of the *Building Code*;

Commonwealth Funded Building Work means *Building Work* in items 1-8 of Schedule 1 of the *Building Code*;

Enterprise Agreement has the same meaning as in the *Fair Work Act 2009*;

Exclusion Sanction has the same meaning as in subsection 3(3) of the *Building Code*;

Letter of Compliance means a letter of compliance issued by the ABCC certifying that an *Enterprise Agreement* is compliant with the *Building Code*;

Related Entity has the same meaning as in subsection 3(2) of the *Building Code*; and

Sub-subcontractor means a *secondary subcontractor*, a *Building Contractor* or *Building Industry Participant* who the Subcontractor has entered, or proposes to enter, into a sub-subcontract with to undertake any of the Works.

1.2 Application

This clause 49 applies where the *main contract* includes *Commonwealth Funded Building Work* or where required by the *Main Contractor*.

1.3 Building Code 2016

(a) The Subcontractor:

- (i) declares as at the date of commencement of this *Subcontract* in relation to the Works; and
- (ii)
- (iii) must ensure that during the term of this *Subcontract* in relation to the *Subcontract Works*,

that it and its *Sub-subcontractors*:

- (iv) comply with the *Building Code*;
 - (v) are not covered by an *Enterprise Agreement* that does not meet the requirements of section 11 of the *Building Code*;
 - (vi) are not subject to an *Exclusion Sanction*;
 - (vii) will only use products in relation to the *Subcontract Works* that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (viii) unless approved otherwise by the ABC Commissioner, are not excluded from performing *Building Work* funded by a state or territory government; and
 - (ix) comply with any applicable Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the *Building Code* that applies to the *Subcontract Works*.
- (b) Without limiting and notwithstanding clause 49.3(a)(iii), the Subcontractor will ensure that remedial action is taken to rectify any behaviour on the part of it and its *Sub-subcontractors* that is non-compliant with the *Building Code*.
- (c) The Subcontractor must every six months during the term of this *Subcontract* advise the *Main Contractor* whether:
- (i) it has in the preceding 6 months or since it last advised the *Main Contractor*, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act 1958*; or
 - (ii) it has in the preceding 6 months or since it last advised the *Main Contractor*, whichever is the earliest:
 - (A) been required to pay any amount under an adjudication certificate (provided in

accordance with a law relating to the security of payments that are due to persons in respect of building work) to a *Building Contractor* or *Building Industry Participant*; or

- (B) owed any unsatisfied judgement debts to a *Building Contractor* or *Building Industry Participant*.

- (d) Compliance with the *Building Code* does not relieve the *Subcontractor* from responsibility to perform this *Subcontract*, or from liability for any defect in the *Subcontract Works* arising from compliance with the *Building Code*.
- (e) The *Subcontractor* must notify the *ABCC* of any breach or suspected breach of the *Building Code* as soon as practicable but no later than 2 working day after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (f) The *Subcontractor* acknowledges the powers and functions of the *ABC Commissioner* and the *ABCC* under the *Act* and the *Building Code* and will ensure that it and its *Sub-subcontractors* comply with any requests made by the *ABCC* and the *ABC Commissioner* within those powers and functions, including but not limited to requests for entry under section 72 of the *Act*, requests to interview any person under section 74 of the *Act*, requests to produce records or documents under sections 74 and 77 of the of the *Act* and requests for information concerning matters relating to the *Building Code* under subsection 7(c) of the *Building Code*.
- (g) The *Subcontractor* must only enter into a sub-subcontract for any of the *Subcontract Works* where:
 - (i) the *Sub-subcontractor* has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the *Building Code*; and
 - (ii) the sub-subcontract with the *Sub-subcontractor* contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the *Building Code*.
- (h) Despite anything to the contrary, the parties must comply with any determination made by the expert under clause 23 for a dispute about payments to the *Subcontractor*.