

DNS Leads Services PTY Ltd.

Subcontractor Agreement

Date of Contract:	The Day of 20
The Principal:	Company Name: ABN: Address:
The Contractor:	Company Name: ABN: Address:

EXECUTED by

Principal Company Name (ACN)

by authority of its directors pursuant to section 127(1) of the Corporations Act 2001:

.....

Signature of Company Secretary

.....

Full Name of Company Secretary

EXECUTED by

Contractor Company Name (ACN)

by authority of its directors pursuant to section 127(1) of the Corporations Act 2001:

.....

Signature of Company Director

.....

Full Name of Company Director

SIGNED by In the presence of

..... (Witness)

BACKGROUND:

- A. The Principal is a company supplying cleaning services throughout South Australia.
- B. The Contractor conducts an independent cleaning service and is willing to provide cleaning services on a non-exclusive basis to principal.

IT IS AGREED as follows:

Recitals

1. The matters referred to under *Background* above are correct and form part of this Agreement.

CONTRACTUAL RELATIONSHIP

2. The principal and the Contractor agree that the Contractor acts as an independent Contractor to the Principal and that they do not have the relationship of:
 - 2.1. employer and employee;
 - 2.2. principal and agent;
 - 2.3. partners;
 - 2.4. joint ventures; or
 - 2.5. franchisor and franchisee.
3. Nothing contained in this Agreement prevents the Contractor from engaging in its other business activities (including providing cleaning services for other principals or customers) as long as they do not interfere with the ability of the Contractor to perform the services under this agreement.
4. The Contractor does not have any entitlement to payment from the Principal for:
 - 4.1. public holidays;
 - 4.2. annual leave;
 - 4.3. sick leave;
 - 4.4. maternity leave;
 - 4.5. long service leave;
 - 4.6. bereavement leave;
 - 4.7. worker's compensation;
 - 4.8. superannuation; and
 - 4.9. any common law claim against the principal in the capacity of an employer.

5. The Contractor is responsible for all the following payments for any reason engaged by the Contractor to provide the services to the Principal namely:
 - 5.1. Salary or payment for services provided by that person;
 - 5.2. annual leave;
 - 5.3. sick leave;
 - 5.4. public holidays;
 - 5.5. maternity leave;
 - 5.6. long services leave;
 - 5.7. bereavement leave;
 - 5.8. worker's compensation payments;
 - 5.9. superannuation;
 - 5.10. group tax;
 - 5.11. payroll tax; and
 - 5.12. any other tax on wages or salaries.
6. The Contractor indemnifies the Principal in respect of any claim against the Principal for any payments due to person used by the Contractor in providing the services to the Principal under this Agreement.
7. The Contractor is responsible for providing any insurance in the event of death, illness or accident to the Contractor, its employees or sub – contractors which prevents the Contractor from performing the Contractor's obligations under this Agreement.
8. The Contractor must notify the Principal if the Contractor is unable to fulfil the Contractor's obligations under this Agreement for reasons of sickness, injury, holidays or bereavement. In this case, if the Principal requests, the Contractor must arrange for a suitable person to fulfil the Contractor's obligations under this Agreement.
9. The Contractor and any person engaged by the Contractor to enable the Contractor to fulfil the Contractor's obligations under this Agreement, must comply with obligations under the Occupational Health, Safety and Welfare Act and Regulations.

Non-Exclusive Appointment

10. This Agreement shall in no way be construed as preventing the Principal from appointing other contractors to perform services or provide equipment facilities and supplies such as are contemplated pursuant to this Agreement.

Terms of Appointment

11. The Contractor shall provide cleaning services for customers and clients of the Principal.
12. The Principal shall provide the particulars of the clients and the services provided in the form as set out in schedule 1 to this Agreement (to be known as “the Supplementary Agreement”) and the terms of the Supplementary Agreement include the terms of this Agreement.
13. The appointment shall subject to this Agreement, continue for such period as the Supplementary Agreement shall continue to operate between the Principal and the client identified in the Supplementary Agreement.
14. The Contractor shall be given the utmost discretion with respect to the performance of its tasks and the provision of its services provided however the Contractor is required to notify the Principal in regard to the progress of the Contractor’s work and any customer feedback on a regular basis.
15. The Contractor may utilise such persons including employees and/or sub-contractors as it wishes in performing the services provided the principal have been notified of the names and details of such persons and the Principal has not objected to any particular person providing the services to the Principal’s clients.
16. In performing the services, the Contractor (its employees and sub-contractors) must:
 - 16.1. provide the services promptly, carefully and to the highest possible standards;
 - 16.2. perform the services exercising all due care, skill and judgement, in an efficient,
professional and cost-effective manner and in accordance with accepted professional and business practices;
 - 16.3. perform the services in accordance with the cleaning specifications given by the Principal or the client;
 - 16.4. complete the services within the time specified by the Principal;
 - 16.5. act in the courteous manner towards the public and the staff of the client;
 - 16.6. comply with any relevant occupational health and safety standards applicable to the performance of the services;

Provision of Own Equipment by Contractor

17. The Contractor will supply all equipment and materials unless otherwise specifically provided to the contrary.
18. Where the Contractor provides its own equipment, facilities or supplies the Principal shall not be liable to contribute to the maintenance, repair, insurance or any other outgoings associated with the provision of such equipment, facilities or supplies.
19. The Contractor shall provide its services, equipment, facilities and supplies during such times and on such days and at such locations as are specified in the Supplementary Agreement.

Supply of Cleaning Products by Principal

20. The Contractor is at liberty to source any of its cleaning supplies or products from any supplier provided such products meet the Principal's minimum standards.
21. If the Contractor wishes to purchase any cleaning supplies and products from the Principal, the price for such cleaning supplies or products will be at the prices fixed from time to time and published in a price circular distributed to the Contractor.
22. If the Contractor purchase any items or product from the principal, then the Principal will issue the Contractor a Tax Invoice for sale of cleaning products (for example cleaning equipment, chemicals, other materials). The Contractor agrees to deposit the payment owed to Principal in the bank account provided by the principal.

Service Fee

23. The Principal shall pay the Contractor the service fee for providing the cleaning services as set out in the Supplementary Agreement.
24. The Principal will pay the Contractor at the intervals specified in the Supplementary Agreement provided the Contractor provides a tax invoice to the Principal and the tax invoice complies with the law establishing the goods and services tax.
25. The Contractor shall assist the Principal by obtaining and furnishing sufficient data regarding any services or products supplied to enable the Principal to effectively invoice its customers.

Customer Confidentiality

26. The Contractor agrees and warrants that whilst on the premises of the Principal or its customers they, their employees or sub-contractors will not read or otherwise seek to obtain knowledge of information contained in such premises, except where such information is expressly provided to the Contractor, their employees or sub-

contractors, or publicly displayed on a notice board, for the general information of visitors to the premises.

27. The Contractor agrees to maintain the confidentiality of any information supplied to them; they, their employees or sub-contractors or otherwise gained by them, their employees or sub-contractors in the performance of the Contractor's work. Where the Contractor is supplied with identification badges or keys, they, their employees or sub-contractors will take all proper precautions to avoid loss, theft or misuse of such badges or keys. The Contractor will not transfer them to any individual without the express authorisation of the Principal and will immediately report any loss, theft or suspected misuse to the Principal.

Minimise Disruption and damage

28. Work is to be carried out with the minimum disruption to the normal business activities of the principal and its customers. Any disruption to building services (power, light etc.) even outside of normal working hours, must be prearranged for a time acceptable to the Principal/or its customers and sufficient advance notification must be given.
29. The Contractor will notify the Principal immediately if they become aware of any unforeseen shortage of materials or labour, which will materially affect the advised completion date or time for the services to be performed.
30. The Contractor will take care to avoid damage to buildings and all fittings, fixtures and furnishings. Protective sheets will be used to cover furniture and carpets etc., whenever there is a risk of damage or soiling. Should damage or soiling occur the Contractor is responsible for re instatement of the damage or soiled item(s), will notify the Principal immediately any such incident occurs.
31. On completion of work in any area, and as close as practicable to a daily basis, the area is to be restored to an acceptable working environment. This includes the removal of all equipment, supplies and rubbish etc. as required. In the case of a contract, which will be performed over an extended period of time, each work area will be cleaned as work is completed in that area.
32. Use of passengers lifts for transport of goods and materials is subject to the local building rules and may be prohibited during peak periods. In any event, care will be taken to avoid damage and soiling and lifts will be left in clean and tidy state.

Warranties by Contractor

33. All materials supplied and work performed will comply with all applicable statutory regulations, standards and codes. The Contractor will ensure that all required permissions and approvals have been obtained prior to commencing work. Where final inspections and approvals are required by an authority, such approvals will be obtained by and at the expense of the Contractor. Any additional work or

rectifications required due to non-compliance with regulations, standards or codes will be at the Contractors expense.

34. The Contractor will ensure that any sub-contractors engaged by them, agree to the Principal's standards, and are responsible for their compliance with these standards.

No Minimum amount of Work

35. The Contractor acknowledges that the Principal's is not providing any warranty or representation that the Contractor will receive any minimum amount of work or fees.

Principal's Trade Marks and Name

36. The Contractor recognises that the Principal is the owner of certain trade names and service marks which apply to and are for use in connection with the Principal's business and this agreement in no way assigns, transfers or conveys to the Contractor any rights in or to the names or marks or any other right to its use except that the Contractor may be permitted to use the trade names or marks in connection with the agreement or ads specifically directed in writing by the Principal.

No Authority to pledge Credit or Accept Payment on behalf of Principal

37. The Contractor shall not make purchases on behalf of or in any way pledge the credit of the Principal without express consent in writing to do so.
38. The Contractor shall not be authorised to receive on behalf of the Principal any sum in payment of any account due for supply of goods or services and in the event that the Contractor receives any payment, it shall forthwith forward such sum direct to the Principal.

Restraint of Dealing with Clients of the Principal

39. Whilst this Agreement is in force, the Contractor shall not for any cause, by any means whatsoever do either one or more of the following acts without the prior written approval of the Principal namely solicit, canvass, entice, negotiate with, contact or secure the custom of a customer or client of the Principal or any parent, subsidiary related or associated company of such customer or client with whom the contractor has provided services pursuant to this Agreement or the Supplementary Agreement (irrespective of whether or not the customer contacted them first).
40. The Contractor shall not after the termination of this Agreement without the prior approval of the Principal, for a period of 12 months commencing from the date of termination solicit, canvass, entice, negotiate with, contact or secure the custom of a

customer or client of the Principal or any parent, subsidiary related or associated company of such customer or client with whom the Contractor has provided services pursuant to this Agreement or the Supplementary Agreement (irrespective of whether or not the customer contacted them first).

41. In the event of the loss of a customer, contract or other benefit and or remuneration by the Principal as a consequence of the contractor doing any one or more of the matters referred to clauses 39 or 40 the Contractor agrees that it will pay to the Principal three times the annual fee charged by the Principal to the client as a measure of damages to compensate the Principal for the reduction in value of its goodwill.
42. The termination of this Agreement shall not release the Contractor from any obligations imposed under this Agreement whereby the context of such obligations is intended to continue notwithstanding the termination.

Termination

43. Either party to this Agreement shall be entitled to determine the agreement upon giving 14 days' notice in writing to the other of the intention to determine this Agreement.
44. Notwithstanding the provisions of clause 43, the Principal shall be entitled in the event of a breach of the obligations of the Contractor to determine this Agreement on giving 48 hours' notice.
45. The Principal may cancel this Agreement immediately if it considers that the Contractor or any person engaged by it to carry out the services:
 - 45.1. is dishonest;
 - 45.2. is engaged in improper conduct;
 - 45.3. is insolvent; or
 - 45.4. is likely to become insolvent.
46. If this Agreement is cancelled, it does not affect the rights of either the Principal or the Contractor in respect of any prior breach of this Agreement.

Confidentiality

47. The Contractor must, during the term of this Agreement (including any renewal) and after the agreement has ended, maintain as confidential information, any information that the Contractor has obtained in relation to the Principal and the clients of the Principal.
48. This duty to maintain confidentiality applies to the information which is truly confidential and does not apply to information which is in the nature of public knowledge, or which is otherwise required to be disclosed by law.

Public Liability Insurance

49. The Contractor warrants to the Principal that it will ensure the services are performed diligently and competently.
50. The Contractor must have a public liability insurance policy to cover its activities within the Principal under this Agreement.
51. The public liability insurance policy must be with a reputable insurer approved by the Principal and must be for an amount of at least \$5,000,000.00 for any one event.
52. The Contractor must produce to the Principal a copy of the policy of insurance and a certificate of currency of the insurance whenever requested by the Principal.
53. The Contractor must register with Return to WorkSA (RTWSA) and provide the copy of certificate of registration whenever requested by the Principal.

Variation

54. Any variation of this Agreement must be in writing and signed by the Principal and the Contractor.

Assignment

55. The Principal may assign this Agreement at any time.
56. The Contractor may assign this Agreement with the prior written consent of the Principal which must not be unreasonably withheld.
57. The respective rights of the Principal and the Contractor to assign this Agreement may only be exercised of, at the time of exercise, there is no existing breach of this Agreement by the assignor.

Severance

58. Any part of this Agreement which is unenforceable may be removed from this Agreement without affecting the rest of the agreement.

Jurisdiction

59. The Principal and the Contractor agree that this Agreement is made in South Australia and will be interpreted under the laws applicable in South Australia. The Principal and the Contractor agree that they will submit to the jurisdiction of the Court of South Australia in the resolution of any dispute under this Agreement.

Notices

60. Any notice required to be given under this Agreement must be in writing and may be given by:
- 60.1. delivering the notice personally; or
 - 60.2. posting the same by certified mail to the last known business or residential address of the Principal or the Contractor in which cast the notice is deemed to have been received on the day following the day of posting; or
 - 60.3. facsimile transmission to the facsimile machine of the other party, and in such case the notices is deemed to have been sent when the sender of the notice receives a message that the transmission has been completed.
61. Either the Principal or the Contractor may inform the other party by notice in writing that the address for service of a notice under this Agreement has changed.

Liability and Dispute Resolution

62. Liability

- 62.1. Each party acknowledges and agrees that:
- 62.1.1. It is in each party's interest to minimise the likelihood of disputes;
 - 62.1.2. Each party has relied on the inclusion of this clause when considering the desirability of executing/signing this Document;
 - 62.1.3. If not for the inclusion of this clause one or more party(s) may have not executed/signed this Document or may have sought different terms;
 - 62.1.4. Subject to clause 63.8 no court action of any kind will be commenced or continued until the provisions of this clause 62 have been strictly complied with any hereby consent to any court action commenced in default of this to be adjourned until strict compliance occurs;
 - 62.1.5. It is bound by each provision in this clause 62;
 - 62.1.6. Reference to "claim" in this clause62 shall mean a claim or dispute relating to the matters the subject of this Document (whether in contract, tort, statutory or otherwise) or the construction or effect of this Document;
 - 62.1.7. This clause waives, limits and may adversely affect rights in relation to court dispute resolution.

63. Dispute Resolution

- 63.1. Any claim which shall at any time hereafter arise between two or more of the parties (the Disputes) shall be initially referred on notice to each other party effected by such claim;
- 63.2. Each Disputant must give notice to the other(s) that the provisions of this clause are to apply to any claim;

63.3. The notice referred to in the clause 63.2 shall include a summary of the issues in dispute and notification of a time within a period of fourteen (14) days beginning four (4) days after the service of the notice, and a place in Adelaide at which the representatives of Disputants (which may include a Disputant) are to meet to try to resolve the claim.

63.4. The representatives of the Disputants shall meet at the time and place specified in the notice (being within 10 kilometres of the Adelaide General Post Office) to try to resolve the claim and shall, if necessary, continue to negotiate for two (2) consecutive business days unless they otherwise agree to reconvene.

63.5. Where to above fails to resolve a claim then the claim shall be submitted to mediation in accordance with, and the subject to, The institute of Arbitrators & Mediators Australia Mediation Rules (available at www.iama.org.au).

63.6. If a claim is not settled within 30 days of the submission to mediation (unless such time is extended by agreement of the parties), it shall be and is hereby submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Rules for the Conduct of Arbitrations (available at www.iama.org.au). For claims in which the quantum is less than \$75,000.00 arbitration shall take place using the submission of documents only unless all Disputants agree otherwise.

63.7. Notwithstanding the above the parties shall continue to perform their obligations and be entitled to exercise their rights pursuant to this document;

63.8. This clause shall not prevent any party from seeking urgent injunctive relief where necessary.

64. Minor Civil Jurisdiction

For any claims in which the quantum is less than \$40,000.00 and where Court proceedings are commenced in the civil (General claims) Division or the Civil (Consumer and Business) Division of the Magistrates Court of South Australia then the parties hereby consent to such proceedings being heard and determined as a minor civil action pursuant to section 10AB of the Magistrates Court Act of 1991 (as amended).

Interpretations and Definitions

65. Unless the contrary intention appears in this Agreement: -

- 65.1. singular words include the plural and the other way around;
- 65.2. one gender included all other genders;
- 65.3. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement;
- 65.4. where two or more persons are included as the Vendor, the agreements on their part bind them jointly and each of them separately;
- 65.5. where two or more persons are included as the Purchaser, the agreements on their part bind them jointly and each of them separately;

- 65.6. the expressions person, vendor or purchaser include a body corporate and in the appropriate context the directors of the body corporate;

- 65.7. a reference to any statutory law or statutory regulation includes all statutes and regulations amending, consolidation or replacing that statute or regulation;

- 65.8. the marginal notes are for reference on and do not form part of this Agreement;

- 65.9. business day means a day on which banks are open for business in the City of Adelaide;

- 65.10. month means a calendar month.

SCHEDULE 1

CUSTOMERS, CLIENTS AND CLEANING SERVICES TO BE SERVED BY CONTRACTOR

DATE:	
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CUSTOMER	LOCATION	SERVICE CHARGE	FREQUENCY
NAME OF SITE	ADDRESS	PRICE CHARGE \$.....	7 Days/ Week
			5 Days/Week

Cleaning Services	As per Cleaning Specification
Commencement of Cleaning:	(date)
Service Fee	As shown in the above table
Timing of Payment	On 12 th day after the completion of job upon submission of Tax Invoice