

CONSTRUCTION CONTRACT

Works Subcontract

Works Package: **Insert Trade**

Project: **Insert Project Title**

Project Number: **Insert idec Job #**

Contract Number: **Insert Contract #**

Version: 1

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Works subcontract

Parties

IDEC **Idec Solutions Pty Ltd ABN 15 082 559 920**
of 58 Anton Road, Hemmant, Queensland 4174

Subcontractor **The entity described in Schedule 1**

Background

- A IDEC has been engaged by the Principal to carry out the Head Contract Works under the Head Contract.
- B IDEC wishes to engage the Subcontractor to perform the Subcontract Works, which form part of the Head Contract Works.
- C The Subcontractor has agreed to perform the Subcontract Works on the terms and conditions to this Subcontract.

GENERAL CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Subcontract:

Business Day means a day that is not a Saturday or Sunday or a public holiday in the place in which the Subcontract Works are being carried out.

Certificate of Completion has the meaning given in clause 6.8.

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with this Subcontract, the Subcontract Works or either party's conduct under this Subcontract or before it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence) or for restitution, including any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit:

- (a) for the payment of money (including damages);
- (b) for an adjustment to the Subcontract Sum; or
- (c) for delay, disruption, acceleration or other time-based claim.

Confidential Information means any information relating to the business or affairs of IDEC or the Principal whether provided to or obtained by the Subcontractor prior to this Subcontract being formed, including this Subcontract and information about IDEC's Personnel, clients or the Principal.

Commencement Date means the date stated in Schedule 1 or otherwise notified in writing by IDEC to the Subcontractor.

Completion is the stage in the carrying out of the Subcontract Works when:

- (a) the Subcontract Works are complete except for minor Defects that IDEC considers do not prevent the Subcontract Works from being safely used for any purpose required under this Subcontract or the Head Contract and the rectification of which will not hinder the convenient use of the Subcontract Works;
- (b) the Subcontractor has cleaned the Site and removed all rubbish and surplus material;
- (c) any documents or other information, required to be provided prior to Completion, including the documents and information described in Schedule 1, have been supplied to IDEC;
- (d) all tests required by this Subcontract, or reasonably required by IDEC, to be passed before Completion, have been carried out and passed and documentary evidence of the passing of such tests has been provided to IDEC; and
- (e) all other requirements of this Subcontract for the achievement of Completion have been completed.

Date for Completion means the date for Completion stated in Schedule 1, as adjusted in accordance with clause 6, but if another date is determined in any litigation, then that other date.

Date of Completion means the date that the Subcontract Works have reached Completion and a Certificate of Completion has been issued by IDEC.

Defect means any part of the Subcontract Works which does not comply strictly with the requirements of this Subcontract or is otherwise unsatisfactory to IDEC and includes any omissions from the Subcontract Works.

Defects Liability Period means the period stated in Schedule 1 and which commences on the Date of Completion.

Excusable Delay means:

- (a) subject to clause 6.3, delay caused by any act, default or omission of IDEC or its Personnel (who are not employed by the Subcontractor) or the Principal; or
- (b) any other delay described in Schedule 1, provided it is outside the reasonable control of the Subcontractor.

Force Majeure Event means any event or circumstance which could not have been prevented, overcome or remedied by the affected party exercising a reasonable standard of care and diligence and directly or indirectly results in a party being prevented from or delayed in performing its obligations under this Subcontract (other than a payment obligation).

Final Payment Claim has the meaning given in clause 12.2.

Government Agency means:

- (a) a government or government department or other body;
- (b) a government, semi-governmental or judicial person; and
- (c) a person (whether autonomous or not) who is charged with administration of a Legislative Requirement.

Head Contract means the agreement between IDEC and the Principal for performance of work of which the Subcontract Works forms part.

Head Contract Program means a program prepared by IDEC or by or on behalf of the Principal.

Head Contract Works means the whole of the work to be executed under the Head Contract.

Industry Best Practice means the standards (including any relevant Australian Standard, practices, methods and procedures generally followed or approved by relevant industries and contractors in Australia with respect to the Subcontract Works and the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in work comparable to the Subcontract Works.

Insolvency Event means any of the following events:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the Subcontractor;
- (b) the Subcontractor is or becomes unable to pay its debts when they fall due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth), or is presumed to be insolvent under the *Corporations Act 2001* (Cth); and
- (c) an application or order is made for the liquidation of the Subcontractor or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Subcontractor, otherwise than for the purpose of an amalgamation or reconstruction;
- (d) the Subcontractor ceases to carry on business;
- (e) the Subcontractor or the Subcontractor's property or undertaking becomes subject to a personal insolvency arrangement under Part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth);
- (f) anything analogous to the events described in paragraphs (a) to (e) occur.

Intellectual Property Rights means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

Latent Condition means physical conditions on or in the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the Subcontractor at the time if the Subcontractor had complied with the warranties in clause 2.3.

Legislative Requirement includes:

- (a) acts, ordinances, regulations, by-laws, ordinances, orders, awards and proclamations of the Commonwealth, the State or Territory or local government relevant to the matters the subject of this Subcontract, the Subcontract Works or where any part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with the carrying out of this Subcontract and the Subcontract Works;
- (c) Australian Standards and any other relevant standards; and
- (d) fees and charges payable in connection with the foregoing.

Payment Claim has the meaning given in clause 12.1.

Payment Claim Date means the date or the milestone for submission of Payment Claims stated in Schedule 1.

Payment Schedule has the meaning given in clause 12.3.

Personnel means the employees, agents, subcontractors, suppliers and consultants of a party, but IDEC's Personnel do not include the Subcontractor or the Subcontractor's Personnel and the Subcontractor's Personnel do not include IDEC or IDEC's Personnel.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Principal means the person named as principal of the Head Contract in Schedule 1.

Policy means any policy, standard, procedure or plan of IDEC listed in Schedule 1 or notified to the Subcontractor from time to time.

Program means the program for the performance of the Subcontract Works as described in clause 6.2.

Quality Assurance System means the Subcontractor's system which establishes the qualities and performance of the Subcontract Works including all quality manuals, plans, management structures, responsibility statements, techniques for identification and management of non-conforming or disputed Subcontract Works and other critical issues relating to quality assurance. The Subcontractor's system must comply with ISO9001 and may be third party accredited or such other standard notified in writing to the Subcontractor.

Schedule of Prices and Rates means the schedule of either or both lump sum prices and rates set out or referenced in Schedule 4.

Security means:

- (a) retention money; or
- (b) one or more unconditional undertakings, with no expiry date,

for the aggregate amount set out in Schedule 1.

Site means the site stated in Schedule 1 and any other land or places made available to the Subcontractor by IDEC or the Principal.

Special Conditions means the special conditions (if any) set out in Schedule 2.

Subcontract means this subcontract comprising of the documents referred to in the Schedule 1, together with any other documents which are incorporated by reference.

Subcontractor's Plan means the plan required under clause 7.1(a).

Subcontract Sum means

- (a) if IDEC accepted a lump sum fixed price then the price contained in the Schedule of Prices and Rates, that amount;
- (b) if IDEC accepted rates, the sum ascertained by calculating the products of the rates in the Schedule of Prices and Rates and the corresponding quantities of Subcontract Works actually performed; and
- (c) if IDEC accepted both lump sums and rates, the aggregate of the sums referred to in paragraphs (a) and (b) above, but including any additions or deductions which may be required to be made under this Subcontract.

Subcontract Works means all work and materials to be carried out or supplied under this Subcontract and handed over to IDEC, including Variations and rectification work.

Variation has the meaning given in clause 11.1(a).

1.2 Interpretation

In this Subcontract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) headings are, in the interpretation of this Subcontract, to be disregarded;
- (d) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this Subcontract and references to this Subcontract include any schedules or annexures;
- (e) a reference to a party to this Subcontract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a document or agreement (including a reference to this Subcontract) is to that document or agreement as amended, supplemented, varied or replaced;
- (h) a reference to this Subcontract includes the agreement recorded by this Subcontract;
- (i) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (j) if any day on or by which a person must do something under this Subcontract is not a Business Day, then the person must do it on or by the next Business Day;
- (k) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (l) a reference to 'month' means calendar month;
- (m) wherever the words 'include', 'included' or 'including' are used in this Subcontract, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative; and
- (n) no provision of this Subcontract is to be construed against the interests of IDEC because IDEC prepared this Subcontract.

1.3 Discrepancy or ambiguity

- (a) This Subcontract comprises the documents set out in Schedule 1.
- (b) Any ambiguity, discrepancy or inconsistency between those documents will be resolved according to the descending order of precedence in Schedule 1.
- (c) If the order of precedence in Schedule 1 cannot resolve the ambiguity, discrepancy or inconsistency, then:
 - (i) IDEC will direct the interpretation to be followed with which the Subcontractor must comply; and
 - (ii) the Subcontractor will have no Claim against IDEC arising from or in connection with the ambiguity, discrepancy or inconsistency, whether under this Subcontract or otherwise.

1.4 No acceptance

Review, perusal or comment by IDEC of any document or information submitted by the Subcontractor does not indicate acceptance or approval by IDEC or relieve the Subcontractor of any of its obligations or liabilities, including responsibility for the correctness of information submitted by the Subcontractor.

2 SUBCONTRACT WORKS

2.1 Performance generally

The Subcontractor must carry out and complete the Subcontract Works in accordance with this Subcontract.

2.2 Standard of Subcontract Works

The Subcontractor must carry out and complete the Subcontract Works:

- (a) in accordance with the Scope of Subcontract Works and the relevant Head Contract provisions (which are available for inspection by the Subcontractor), including plans, drawings and specifications relating to the Head Contract Works;
- (b) in an efficient, professional and cost effective manner in accordance with relevant industry principles and standards and to Industry Best Practice;
- (c) except where a higher standard is specified, in a good and proper and workmanlike manner and to the standard of care, skill, judgment and foresight that would be expected of a skilled and experienced contractor regularly engaged in the business of performing works and services of the kind required by this Subcontract;
- (d) using materials which (unless expressly stated otherwise) are new, of merchantable quality and fit for the purpose for which they are to be used; and
- (e) in accordance with all Legislative Requirements, Policies and directions and orders given by IDEC.

2.3 Warranties

The Subcontractor warrants that:

- (a) it has carefully reviewed this Subcontract and all other information made available by IDEC to the Subcontractor and has a clear understanding of the Subcontract Works and all things required to achieve Completion by the Date for Completion;
- (b) it has the skill, experience, ability and available resources to carry out the Subcontract Works in accordance with this Subcontract;
- (c) it has made its own investigation and assessment of the work and risks involved in undertaking the Subcontract Works and it has reviewed and satisfied itself about the information that IDEC has made available to it about the Subcontract Works and this Subcontract;
- (d) it has not relied upon, and will not rely upon, any matter disclosed, information provided or representation made to it by IDEC and that it has made and relied, and will make and rely, solely upon its own independent assessment, investigation and judgment of the work and risks involved in undertaking the Subcontract Works;
- (e) it has examined the Site and all its physical and environmental conditions, including surface, water and weather conditions at, on or affecting the Site;
- (f) it has informed itself of the nature of all materials necessary for the Subcontract Works, the means of access to the Site and the transport routes available for deliveries to the Site, and facilities at the Site and the availability of accommodation;
- (g) the scope of the Subcontract Works includes all incidental and related work which may arise from matters referred to, identified in, or to be reasonably inferred from or contemplated in Schedule 3; and
- (h) when complete, the Subcontract Works will comply with the requirements of this Subcontract, Industry Best Practice and all applicable Legislative Requirements.

2.4 Subcontractor to supply

The Subcontractor must, except to the extent stated in Schedule 1, supply all materials, equipment, services, utilities, temporary works, consumables items, transport, plant, labour and supervision the Subcontractor requires to fulfil its obligations under this Subcontract.

3 SUBCONTRACT SUM

3.1 Payment

In consideration of the proper performance of the Subcontract Works by the Subcontractor in accordance with this Subcontract, IDEC will pay the Subcontractor the Subcontract Sum.

3.2 Subcontract Sum

The Subcontract Sum and any rates or prices in a Schedule of Prices and Rates (together with any additions or deductions expressly provided for by this Subcontract):

- (a) include all costs, expenses, fees, customs duties and charges that may be incurred by the Subcontractor in performing all its obligations under this Subcontract;
- (b) include the provision and security of all materials, equipment, services, utilities, temporary works, consumables items, transport, plant, labour and supervision to carry out the Subcontract Works, even if not specifically mentioned in this Subcontract;
- (c) include an allowance for interfaces required with and working adjacent to other works, activities and operations at the Site (if applicable);
- (d) include the Subcontractor's profit, attendance, preliminaries, supervision and on-Site and off-Site overheads in connection with the performance of its obligations under this Subcontract; and
- (e) will not be subject to any rise and fall in costs of materials or labour or any other adjustment for any reason, except to the extent expressly provided by this Subcontract.

3.3 Subcontractor acknowledgements

The Subcontractor acknowledges that it has made allowances in the Subcontract Sum and any rates or prices in a Schedule of Prices and Rates for all the risks and other matters for which it is responsible under this Subcontract, including the matters that it has warranted under clause 2.3.

3.4 Schedule of Prices and Rates

If the Schedule of Prices and Rates omits an item which should have been included, that item is deemed to have been included in other items in the Schedule of Prices and Rates and the Subcontractor will have no Claim in connection with the omission.

4 DIRECTIONS

- (a) Directions by IDEC may be given in writing or given orally and later confirmed in writing.
- (b) The Subcontractor must comply with any direction of IDEC within the time nominated, or if no time is nominated, as soon as reasonably possible. Except as expressly provided in this Subcontract, the Subcontractor has no Claim arising from or in connection with any direction.

5 LATENT CONDITIONS

5.1 Notification

- (a) If, during the execution of the Subcontract Works, the Subcontractor becomes aware of a Latent Condition, the Subcontractor will, within three Business Days of becoming aware of the Latent Condition, and where possible before the Latent Condition is disturbed, give written notice of the existence and characteristics of the Latent Condition to IDEC.
- (b) If required by IDEC, the Subcontractor must also give a statement in writing specifying:
 - (i) the Latent Condition encountered and in what respects it differs materially from that which would have been expected;
 - (ii) the additional work and resources which the Subcontractor estimates to be necessary to deal with the Latent Condition;
 - (iii) the time the Subcontractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Completion;
 - (iv) the Subcontractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
 - (v) other details reasonably required by IDEC.

5.2 Adjustment

If a Latent Condition causes the Subcontractor to:

- (a) incur extra cost; and
- (b) the Subcontractor has given IDEC notice in accordance with Clause 5.1,

IDEC will promptly investigate the Latent Condition and determine whether any Variation is necessary, and if a Variation is necessary, will value the Variation in accordance with clause 11.2.

5.3 Time bar

Where pursuant to this Clause 5, if a valuation is to be made under clause 11.2, regard will not be had to the value of more work carried out or more cost incurred earlier than three Business Days before the date on which the Subcontractor gives the written notice required by Clause 5.1.

6 TIME AND COMPLETION

6.1 Progress

The Subcontractor must:

- (a) commence the Subcontract Works on the Commencement Date;
- (b) proceed with the Subcontract Works with due diligence and without delay; and
- (c) achieve Completion by the Date for Completion.

6.2 Programming

- (a) The Subcontractor must comply with the timing and sequencing in any Head Contract Program provided to the Subcontractor by IDEC.
- (b) If requested by IDEC, the Subcontractor must prepare a Program for carrying out the Subcontract Works that is in accordance with any Head Contract Program, applicable requirements in this Subcontract and the requirements of IDEC and provide it to IDEC for approval.
- (c) The Subcontractor must promptly update or revise the Program at its own cost and resubmit it to IDEC monthly and if directed by IDEC because the Program:
 - (i) does not comply with clause 6.2(b); or
 - (ii) no longer reflects the current status of the Subcontract Works due to a delay (however caused), extension of time, Variation or a change in the sequence of performance of the Subcontract Works.

6.3 Delay

- (a) If the Subcontractor believes that anything, including any act or omission of IDEC, may delay the progress of the Subcontract Works, the Subcontractor must immediately notify IDEC in writing with details of the estimated extent of the delay and the cause.
- (b) If, at any time during the performance of the Subcontract Works, IDEC considers that the Subcontractor will not achieve Completion by the Date for Completion:
 - (i) the Subcontractor must mobilise additional labour, plant or equipment to improve the progress of the Subcontract Works so that Completion will be achieved by the Date for Completion; and
 - (ii) IDEC may direct the Subcontractor as to the sequence in which the Subcontract Works are to be performed and the Subcontractor has no right to Claim in connection with the direction.
- (c) If the Subcontractor fails to comply with clause 6.3(b), IDEC may mobilise additional labour, plant or equipment to improve the progress of the Subcontract Works and the cost of doing so will be a debt due and payable from the Subcontractor to IDEC.

6.4 Extension of time

- (a) Subject to clause 6.4(c), the Subcontractor will only be entitled to Claim an extension of time to the Date for Completion where:
 - (i) the Subcontract Works are delayed by any Excusable Delay which will prevent the Subcontractor from achieving Completion by the Date for Completion;
 - (ii) the Subcontract Works are not concurrently delayed by a cause that is not an Excusable Delay;
 - (iii) within five Business Days of the commencement of the Excusable Delay, the Subcontractor gives written notice to IDEC setting out the details of the Excusable Delay, the extension of time sought, evidence of its effect on the critical path of the Subcontract Works by reference to the Program and the steps taken by the Subcontractor to mitigate effect of the delay; and
 - (iv) if the delay continues beyond the extension of time claimed by the Subcontractor under clause 6.4(a)(iii), the Subcontractor gives IDEC an updated notice every ten Business Days that satisfies the requirements of clause 6.4(a)(iii) until the delay ends.
- (b) Provided the Subcontractor complies with clause 6.4(a), IDEC will determine what, if any, extension of time will be granted to the Subcontractor and will notify the Subcontractor in writing of the revised Date for Completion.
- (c) IDEC may (without being obliged to do so) at any time and for any reason it thinks fit, extend the Date for Completion. This right is solely for the benefit of IDEC and may be exercised in its absolute discretion, even if the Subcontractor is not entitled to an extension of time or has not claimed an extension of time.
- (d) If the Subcontractor does not make any Claim for an extension of time within the time or in the form specified in clause 6.4(a), the Subcontractor is not entitled to an extension of time, or to later Claim an extension of time, for that delay.

6.5 Delay costs

Except to the extent that this Subcontract otherwise expressly provides, the Subcontractor will not be entitled to any additional payment or to any Claim as a result of the granting of an extension of time.

6.6 Early Completion

- (a) IDEC may direct the Subcontractor to complete the Subcontract Works earlier than the Date for Completion, or to alter the sequence in which the Subcontract Works are to be performed, and the Subcontractor must comply with that direction, unless the Subcontractor can demonstrate that it is not possible to do so.

- (b) If compliance with a direction under clause 6.6(a) causes the Subcontractor to incur additional costs to that contemplated at the date of this Subcontract, the Subcontractor will be paid its reasonable direct costs of complying with the direction to be assessed by IDEC unless the Subcontractor's progress was insufficient to achieve Completion by the Date for Completion.

6.7 Liquidated damages

- (a) If the Subcontractor fails to reach Completion by the Date for Completion, the Subcontractor will be indebted to IDEC for liquidated damages at the rate stated in Schedule 1, if any, for every day after the Date for Completion up to and including the Date of Completion or the date that this Subcontract is terminated pursuant to clause 16, whichever occurs first.
- (b) IDEC and the Subcontractor agree that all liquidated damages which may be payable pursuant to this clause 6.7:
- (i) do not limit IDEC's other rights under this Subcontract or at law for any other breach of this Subcontract; and
 - (ii) do not relieve the Subcontractor from any of its obligations or liabilities under this Subcontract, including its obligations to achieve Completion.
- (c) If Schedule 1 does not provide for any liquidated damages or the liquidated damages are for any reason found to be unenforceable, IDEC may seek damages at common law for the Subcontractor's failure to achieve Completion by the Date for Completion.

6.8 Certificate of Completion

- (a) The Subcontractor must give IDEC at least five Business Days written notice of the date on which the Subcontractor anticipates that Completion will be reached. When the Subcontractor believes that Completion has been reached, it must request in writing that IDEC issue a Certificate of Completion.
- (b) Within ten Business Days after receiving the request, IDEC will give the Subcontractor a Certificate of Completion stating the date on which Completion was achieved or written reasons for not doing so.
- (c) If IDEC is of the opinion that Completion has been reached, it may issue a Certificate of Completion even though no request has been made by the Subcontractor.
- (d) If IDEC issues a Certificate of Completion the Payment Claim date prior to the issuance of the Certificate of Completion is the last 'Payment Claim Date' and no further payment claims will be valid under this agreement.

7 LEGISLATIVE AND OTHER REQUIREMENTS

7.1 Subcontractor's Plans

- (a) If Schedule 1 requires it, the Subcontractor must, within the time directed by IDEC, and before commencing the Subcontract Works, develop and submit to IDEC for its approval, a plan governing how the Subcontractor and its Personnel will perform the Subcontract Works to comply with the relevant subject matter set out in Schedule 1 (**Subcontractor's Plan**). The Subcontractor must prepare a separate Subcontractor's Plan for each subject matter set out in Schedule 1.
- (b) The Subcontractor must ensure that the format and content of each Subcontractor's Plan satisfies the requirements of any applicable Policies, Legislative Requirements and the reasonable requirements of IDEC.
- (c) IDEC will notify the Subcontractor of any reasonable revisions that it requires to a Subcontractor's Plan and the Subcontractor must promptly make those revisions provided that they do not breach any Legislative Requirement.
- (d) The Subcontractor must comply with each approved Subcontractor's Plan.
- (e) The Subcontractor acknowledges and agrees that the Subcontractor must, at its cost, comply with clauses 7.1(b), 7.1(c) and 7.1(d) if IDEC notifies the Subcontractor of any reasonable revisions that it requires to a Subcontractor's Plan.

7.2 Safety and environment generally

The Subcontractor must:

- (a) comply with all Legislative Requirements and Policies;
- (b) attend any inductions, tool box talks or such other safety and environment meetings required by IDEC, the Principal or any other person with control of the applicable part of the Site pursuant to any Legislative Requirements;
- (c) comply with all lawful directions issued by any person with control of the applicable part of the Site pursuant to any Legislative Requirements relating to workplace health and safety;
- (d) comply with any relevant health, safety, environment and quality management plans of IDEC and the Principal;
- (e) take all reasonable care to provide and maintain a workplace free of accidents and injuries;
- (f) immediately notify IDEC of any accidents or incidents involving its Personnel and, within one Business Day, give IDEC a detailed report of the circumstances and consequences of the accident or incident; and
- (g) cooperate in any investigations relating to workplace incidents.

7.3 Safety audit

The Subcontractor must provide all assistance and access to its offices, Personnel and records to enable IDEC, the Principal and any Government Agency to conduct audits on the Subcontractor's compliance with its obligations under this clause 7, the Subcontractor's Plans, the Policies or any Legislative Requirements. If any non-conformance is detected, the Subcontractor must immediately rectify the non-conformance at its cost.

7.4 Subcontractor to maintain licences

The Subcontractor must maintain, at its cost, any licences, accreditations, certificates or registrations the Subcontractor or its Personnel are required to possess by any Legislative Requirements in order to complete the Subcontract Works.

7.5 Consequences of breach

- (a) If the Subcontractor fails to comply with an obligation under this clause 7, IDEC may:
- (i) require the Subcontractor to suspend the performance of any aspect of the Subcontract Works, at its cost, until the relevant non-compliance has been rectified; and
 - (ii) perform or have performed the obligation on the Subcontractor's behalf and all expenses incurred by IDEC are recoverable from the Subcontractor as a debt due and payable to IDEC.

- (b) The Subcontractor must indemnify IDEC against any Claim, liability, or loss suffered or incurred by IDEC arising from or in connection with the Subcontractor's breach of its obligations under this clause 7.

8 PERSONNEL

8.1 Removal of Subcontractor's Personnel

Where any of the Subcontractor's Personnel have, by any act or omission:

- (a) breached any Legislative Requirement, the requirements of any Government Agency or any Policies;
- (b) in IDEC's opinion, been unsafe, incompetent, offensive or negligent in the performance of the Subcontract Works; or
- (c) breached the requirements of a Subcontractor's Plan,

IDEC may direct the Subcontractor to immediately remove such Personnel from the Site and the Subcontractor must do so at its cost and ensure that such Personnel do not return to the Site without IDEC's prior written consent, which may be refused or given subject to conditions. The Subcontractor must, if directed by IDEC, promptly replace that Personnel with another Personnel acceptable to IDEC.

8.2 Procure compliance of Personnel

The Subcontractor must ensure its Personnel comply with the requirements of this Subcontract.

8.3 Industrial relations

The Subcontractor is responsible for industrial relations involving its Personnel. The Contractor must keep IDEC informed of any disputes with or demands by its Personnel or their representatives and any other circumstances which could result in industrial action affecting the Site.

9 SITE MATTERS

9.1 Access to Site

- (a) IDEC will give the Subcontractor sufficient access to the Site to perform the Subcontract Works on or before the Commencement Date. If access to all of the Site is not given to the Subcontractor at that time, IDEC will progressively grant the Subcontractor further access to the Site to enable the Subcontract Works to be performed.
- (b) The Subcontractor may only use the Site for the purpose of performing the Subcontract Works.

9.2 Clean Site

The Subcontractor must keep that part of the Site to which it has access clean and tidy and must regularly remove from the Site all rubbish and surplus material created by it or its Personnel.

9.3 Coordination

The Subcontractor will not have exclusive access to the Site or any part of it and must coordinate the Subcontract Works with activities of IDEC, IDEC's Personnel, the Principal's Personnel and any other contractors. The Subcontractor acknowledges that it has allowed in the Subcontract Sum and is not entitled to any Claim arising from the impact of any interference caused to the Subcontractor or the Subcontract Works by any person on the Site.

9.4 Work of others

If the Subcontract Works are in any way dependent upon the quality or nature of any work or services performed by others, then the Subcontractor must verify that the other works or services are suitable in all respects for the proper performances of the Subcontract Works. If the Subcontractor considers that the other works are not suitable, it must notify IDEC in writing and seek instructions before commencing the relevant Works. If the Subcontractor fails to comply with this clause, the Subcontractor will have no Claim for any additional costs or delays that it later suffers due to the unsuitability of the other work or services.

9.5 Meetings

- (a) The Subcontractor must attend, and ensure that any of its Personnel requested by IDEC also attend, all meetings (**Site Meetings**) requested by IDEC to discuss all matters relevant to the Subcontract Works.
- (b) Despite the recording of the minutes of any Site Meeting, no resolution or communication at any Site Meeting (nor minutes recording any resolution or communication) will waive, release, vary or affect in any way the parties obligations under this Subcontract nor will it constitute a direction under this Subcontract and the Subcontractor will have no entitlement to Claim in connection with such minutes.

9.6 Obligation to prevent damage

- (a) The Subcontractor must take all necessary steps to prevent damage to any property, and to prevent harm or nuisance to any persons, on or near the Site. If any damage is caused by the Subcontractor or its Personnel, the Subcontractor must:
 - (i) remedy, at its own cost, the damage as soon as possible to the satisfaction of IDEC; and
 - (ii) indemnify IDEC for any damage, loss, cost or expense suffered by IDEC in connection with the damage to property or harm or nuisance to any persons.
- (b) If the Subcontractor fails to comply with its obligations in clause 9.6(a), IDEC may perform those obligations itself or through others and all costs, damages and expenses incurred by IDEC in performing those obligations will be a debt due and payable from the Subcontractor to IDEC.

9.7 Working hours

The Subcontractor must carry out the Subcontract Works at the Site during the working hours stated in Schedule 1 unless otherwise expressly directed in writing by IDEC.

9.8 Progress reports

The Subcontractor must, if requested by IDEC, provide IDEC with detailed written progress reports as to the performance of the Subcontract Works in such detail and in such time as requested by IDEC.

10 DEFECTS

10.1 Rectification of defects

- (a) The Subcontractor must, at its cost, and with as little inconvenience to the occupants or users of the Subcontract Works as reasonably possible, rectify any Defect which appears in the Subcontract Works during the performance of the Subcontract Works or during the Defects Liability Period.
- (b) Without limiting clause 10.1(a), where IDEC becomes aware of any Defect in the Subcontract Works during the performance of the Subcontract Works or during the Defects Liability Period, it may direct the Contractor to rectify the Defect.
- (c) If any Defect is not rectified within five Business Days of a direction by IDEC under clause 10.1(b), IDEC may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to IDEC from the Subcontractor.

10.2 Subcontractor's obligations not effected

The Subcontractor is not relieved from any of its obligations under this Subcontract as a result of IDEC exercising its rights under clause 10.1.

11 VARIATIONS

11.1 Variations

- (a) IDEC may at any time direct the Subcontractor in writing to amend, increase, decrease, omit or change the quality, character or extent of the Subcontract Works or to execute additional work or direct any variation that may be necessary to give effect to any variation directed under the Head Contract (**Variation**). No Variation directed by IDEC will invalidate this Subcontract.
- (b) If IDEC directs a Variation omitting all or any part of the Subcontract Works, IDEC will not be in breach of this Subcontract if it thereafter either performs the omitted works or engages a third party to do so.
- (c) The Subcontractor must not vary the Subcontract Works except as directed in writing by IDEC in accordance with clause 11.1(a).

11.2 Valuation

- (a) Within five Business Days of receiving a direction under clause 11.1, the Subcontractor must provide IDEC with a detailed quotation for the Variation supported by measurements or other evidence of cost.
- (b) Subject to clause 11.4, where this Subcontract provides for a valuation to be made under this clause, and the parties cannot agree on the valuation of the Variation, the value will be a reasonable amount as determined by IDEC and in accordance with Schedule 1.
- (c) Except as provided in clauses 6.4 and 11, the Subcontractor has no right to Claim as a result of any Variation directed by IDEC.

11.3 Directions

If the Subcontractor is of the opinion that any direction or instruction is a Variation even though it was not expressed as such, then the Subcontractor must notify IDEC of its opinion in writing within three Business Days from the date of the direction. If the Subcontractor fails to notify IDEC in accordance with this clause 11.3, the Subcontractor will not be entitled to make any Claim with respect to the instruction or direction. Despite the issuance of a notification under this clause 11.3 by the Subcontractor, the Subcontractor must continue to perform its obligations under this Subcontract.

11.4 No Variation

The Subcontractor will not be entitled to any Claim if a Variation results from:

- (a) the performance of incidental tasks or tasks that can be reasonably inferred as necessary to safely and effectively complete the Subcontract Works;
- (b) any Works not being in accordance with this Subcontract;
- (c) the Subcontractor being in breach of this Subcontract; or
- (d) any negligence or any default of the Subcontractor or its Personnel.

12 PAYMENT

12.1 Subcontractor to submit Payment Claims

- (a) The Subcontractor must submit to IDEC, on the Payment Claim Date, its claims for payment (**Payment Claim**) for the Subcontract Works performed since the last Payment Claim Date, which must include:
 - (i) calculations and evidence substantiating the amount which it claims;
 - (ii) a statutory declaration which states that as at the Payment Claim Date, no wages or other monies are due and owing by the Subcontractor to its Personnel for any work the subject of that Payment Claim and which is not misleading or deceptive in any way; and
 - (iii) any other information IDEC may reasonably require.
- (b) The Payment Claim must be in a form approved by IDEC.
- (c) If a Payment Claim is made before a Payment Claim Date, it is deemed to have been submitted on the next Payment Claim Date, provided that in no circumstance may more than one Payment Claim be submitted for any Payment Claim Date.

12.2 Final Payment Claim

- (a) On the Payment Claim Date immediately following the Date of Completion, the Subcontractor must submit to IDEC its final claim for payment for the Subcontract Works performed, including any other moneys due under this Subcontract, supported by:
 - (i) calculations and evidence substantiating the amount which it claims;
 - (ii) a deed of release in the form set out in Schedule 5; and
 - (iii) any other information IDEC may reasonably require.
- (Final Payment Claim)**

- (b) Any claim for payment which the Subcontractor could have made against IDEC and has not been included in the Final Payment Claim will be barred.

12.3 Payment Schedule

- (a) Subject to clauses 12.5 and 12.7, within ten Business Days of receipt of a Payment Claim or the Final Payment Claim, IDEC will issue to the Subcontractor a payment schedule stating:
- (i) the Payment Claim or Final Payment Claim to which the payment schedule applies;
 - (ii) the amount of the Payment Claim or Final Payment Claim which in the opinion of IDEC (subject to clauses 12.7 and 19), is payable by IDEC; and
 - (iii) if the amount in the payment schedule is less than that in the Payment Claim or Final Payment Claim, the reasons why, **(Payment Schedule)**.
- (b) At any time up to the expiry of the Defects Liability Period, IDEC may, by the issue of a Payment Schedule, correct an error in an earlier Payment Schedule.

12.4 Payment

Subject to clauses 12.7 and 12.8, IDEC will pay the amount of the Payment Schedule within the timeframe set out in Schedule 1. Any payment by IDEC is on account only, and is not evidence of any Works having been carried out in accordance with the requirements of this Subcontract.

12.5 Unfixed plant and materials

The Subcontractor cannot claim payment for materials, plant or equipment which have not either been delivered to the Site or incorporated into the Subcontract Works, unless IDEC otherwise agrees in writing.

12.6 Conditions to Payment Claim Date

Without limiting IDEC's other rights, a Payment Claim Date will not arise and the Subcontractor will not be entitled to submit a Payment Claim unless the Subcontractor has:

- (a) provided the Security (if any);
- (b) returned the signed copy of this Subcontract;
- (c) provided evidence of all required insurances; and
- (d) complied with clauses 12.1(a) and 12.2(a).

12.7 Disputed amounts

IDEC is not required to pay any amounts which it disputes until after the dispute has been resolved in accordance with clause 16.6 but will pay all amounts not subject to the dispute.

12.8 Deductions by IDEC

IDEC may set off against and deduct from any monies due to the Subcontractor any debt, costs, damages, loss or expense due to or claimed by IDEC from the Subcontractor arising from or in connection with this Subcontract or the Subcontract Works. If no monies are due to the Subcontractor, or if the monies due to the Subcontractor are insufficient to discharge the debt, costs, damages, loss, expense or Claim, IDEC may have recourse to the Security.

13 GST

13.1 GST exclusive

Except under this clause 13, the consideration for a Supply made under or in connection with this Subcontract does not include GST.

13.2 Taxable Supply

If a Supply made under or in connection with this Subcontract is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this Subcontract for that Supply; and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

13.3 Reimbursement or indemnity

If either party has the right under this Subcontract to be reimbursed or indemnified by another party for a cost incurred in connection with this Subcontract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

13.4 Definitions

In this clause 13, the terms 'GST', 'Input Tax Credit', 'Joint Venture Operator', 'Recipient', 'Representative Member', 'Supplier', 'Supply', 'Tax Invoice' and 'Taxable Supply' have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

14 INDEMNITY AND INSURANCE

14.1 Indemnity

- (a) The Subcontractor indemnifies IDEC and its Personnel from all Claims, costs, expenses, losses and damages incurred in connection with:
- (i) the performance of the Subcontract Works;
 - (ii) claims brought against IDEC by the Principal arising out the Subcontract Works;
 - (iii) any loss of or damage to real or personal property (including the Subcontract Works) caused by the Subcontractor or its Personnel; or

- (iv) personal injury, illness or death caused by the Subcontractor or its Personnel, except to the extent caused by the negligence of IDEC or its Personnel.
- (b) The Subcontractor must pay amounts due under this indemnity on demand from IDEC.
- (c) Clause 14.1(a) survives the expiration or termination of this Subcontract.

14.2 Insurances required

- (a) Before the Commencement Date, the Subcontractor must, at its cost, take out and maintain the insurance policies set out in Schedule 1.
- (b) The insurances must be taken out with insurers, and on terms, satisfactory to IDEC. Evidence of the currency of the insurances must be given in writing to IDEC prior to the Commencement Date and at any time upon request by IDEC.

14.3 Insurance excess

The Subcontractor must pay any deductibles or excesses in connection with a claim under any policy of insurance effected by IDEC, the Principal or the Subcontractor, which relate to the Subcontractor or the Subcontract Works.

15 SUSPENSION

15.1 Suspension by IDEC

IDEC may direct the Subcontractor in writing to suspend the performance of the whole or any part of the Subcontract Works, for such time as IDEC reasonably determines, for the following reasons:

- (a) any act, default or omission of the Subcontractor or its Personnel;
- (b) the protection or safety of any person or property;
- (c) the convenience of IDEC; or
- (d) a suspension directed under the Head Contract.

15.2 Resumption of Subcontract Works

IDEC may at any time direct the Subcontractor to resume the performance of the Subcontract Works and the Subcontractor must promptly comply with such a direction at its cost.

15.3 Costs of suspension

- (a) If the suspension is due to a matter referred to in clause 15.1(c) or due to a breach of contract or negligence of IDEC or its Personnel, the Subcontractor's costs related to the suspension will be valued under clause 11.2 and added to the Subcontract Sum.
- (b) The Subcontractor will not be entitled to costs or any other Claim if the suspension occurs because of a matter referred to under clauses 15.1(a) or 15.1(b).
- (c) If a suspension is due to a matter referred to in clause 15.1(d), then the Subcontractor's costs related to the suspension will be valued under clause 11.2 and added to the Subcontract Sum, subject to the following conditions:
 - (i) the maximum increase in the Subcontract Sum must not exceed the amount, if any, recoverable by IDEC under the Head Contract. For the avoidance of doubt, this may result in the Subcontractor receiving no payment for the suspension;
 - (ii) the Subcontractor will not be entitled to any reimbursement if the suspension was contributed to by a breach of contract or negligence of the Subcontractor or its Personnel; and
 - (iii) the Subcontractor cannot make any Claim for money, in excess of its entitlement under this clause 15.3, as a result of the suspension.

16 TERMINATION

16.1 Termination by notice

IDEC may, at any time, terminate this Subcontract for any reason in its absolute discretion by notice in writing to the Subcontractor of not less than 14 days.

16.2 Termination for default by Subcontractor

If the Subcontractor:

- (a) is subject to an Insolvency Event;
- (b) breaches any applicable Legislative Requirements;
- (c) fails to comply with a written notice from IDEC or any other direction properly given, within the time frame required by IDEC; or
- (d) breaches any provision of this Subcontract and fails to remedy that breach within ten Business Days of being directed in writing to do so by IDEC,

then, without limiting its rights at law, IDEC may immediately by notice to the Subcontractor:

- (e) terminate this Subcontract; or
- (f) take any part or all of the Subcontract Works out of the hands of the Subcontractor and complete the same (either by itself or through another party) and all costs and damages arising from or in connection with such engagement will be a debt due and payable by the Subcontractor to IDEC.

16.3 Termination of Head Contract

If the Head Contract is terminated for any reason, then IDEC may immediately terminate this Subcontract by notice to the Subcontractor.

16.4 IDEC to pay costs

- (a) If IDEC exercises its rights under clauses 16.1 or 16.3, the Subcontractor will be entitled to be paid for work completed up to the date of termination, any materials reasonably ordered and that the Subcontractor is legally required to accept and reasonable demobilisation costs but otherwise has no other Claim as a consequence of the termination including for any loss.

- (b) If IDEC exercises its rights under clause 16.2(e) or 16.2(f), IDEC will not be liable to make any further payment to the Subcontractor for the Subcontract Works.

16.5 Subcontractor's obligations on termination

Upon termination of this Subcontract, the Subcontractor must immediately, or on such later date specified in the notice of termination cease all further work and remove from the Site all plant, equipment, tools, appliances or other property and items belonging to the Subcontractor or its Personnel, and any rubbish or debris and leave the whole of the Site in a clean and safe condition.

16.6 Effect of termination

Termination of this Subcontract will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.

17 DISPUTE RESOLUTION

17.1 Condition precedent to start of proceedings

If any dispute between the parties arises from or in connection with this Subcontract (whether before or after termination of this Subcontract) (**Dispute**), the parties must resolve it in the manner set out in this clause 17, and a party may not commence court or arbitration proceedings concerning the Dispute unless:

- (a) the party has complied with this clause 17; or
- (b) the party seeks urgent interlocutory relief.

17.2 Notice of Dispute

A party claiming that a Dispute has arisen must notify the other party of the Dispute and specify the nature of the claim (**Dispute Notice**).

17.3 Resolution by negotiation

Within ten Business Days after the date the Dispute Notice is given (or a longer period as the parties may agree in writing), then a senior executive of IDEC and the Subcontractor must meet to negotiate in good faith a resolution of the Dispute.

17.4 Mediation

If the Dispute is not resolved under clause 17.3 within 20 Business Days after the date the Dispute Notice is given (or a longer period as the parties may agree in writing), either party may refer the Dispute to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules. The parties must agree on the identity of the mediator, failing which a mediator must be appointed by the Chairman of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia (or any successor to that position or body should either cease to exist). The place of mediation will be Brisbane.

17.5 Litigation

If the Dispute is not resolved under clause 17.4 within 40 Business Days after the date the Dispute Notice is given (or a longer period as the parties may agree in writing), either party may commence litigation.

17.6 Dispute affecting Principal

Where in IDEC's opinion, a Dispute gives rise to a claim by IDEC against the Principal under the Head Contract, and IDEC intends to pursue that claim through the dispute resolution procedures under the Head Contract, the Subcontractor must give IDEC all reasonable assistance in the pursue of IDEC's claim or dispute and must make available all relevant information, documents and evidence within its possession or control.

17.7 Continued performance required

Each party must continue to perform its obligations under this Subcontract despite the existence of a Dispute.

17.8 Survival

Clause 17 survives the expiration or termination of this Subcontract.

18 NOTIFICATION OF CLAIMS

18.1 Requirements for notice

- (a) IDEC will not be liable upon any Claim unless:
 - (i) where the requirements for notification of the Claim are prescribed elsewhere in this Subcontract, the Subcontractor has strictly complied with those requirements; or
 - (ii) where clause 18.1(a)(i) does not apply, the Subcontractor has given IDEC written notice of the Claim within five Business Days of the first occurrence of the events or circumstances on which the Claim is based.
- (b) A notice under clause 18.1(a)(ii) must be in writing and include:
 - (i) the legal basis for the Claim, whether based on a term of this Subcontract or otherwise, and if based on a term of this Subcontract, clearly identify the specific term;
 - (ii) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
 - (iii) details of the quantum of the Claim showing the calculations and their bases.

18.2 Non-compliant Claims barred

Failure by the Subcontractor to comply with this clause 18 will be an absolute bar to making the Claim.

19 SECURITY

19.1 Security

- (a) The Subcontractor must provide the Security stated in Schedule 1 to IDEC for the purpose of ensuring the due and proper performance by the Subcontractor of its obligations under this Subcontract.
- (b) Any interest earned on Security will be owned by IDEC.

19.2 Expiry of Security

If any Security (including substitute Security) expires before the expiration or termination of this Subcontract, the Subcontractor must, at least ten Business Days before the date the Security expires, provide IDEC with new Security in the same amount and form that has an expiry date not preceding the expiration or termination of this Subcontract. If the Subcontractor fails to comply with this clause 19.2, the Subcontractor agrees that, without limiting IDEC's other rights under this Subcontract, IDEC may call on and have recourse to the Security.

19.3 Access to Security

IDEC may have immediate recourse to Security without notice, including converting into money any Security that does not consist of money, to satisfy any loss, expense or damages IDEC may incur or suffer as a consequence of any act, omission or default of the Subcontractor in connection with this Subcontract or the Subcontract Works.

19.4 Release

Subject to any rights it may have under this Subcontract, IDEC will:

- (a) within 20 Business Days of receipt of Final Payment Claim, release half of the value of any Security held by IDEC as at the date of issue of the Certificate of Completion; and
- (b) within 20 Business Days of expiry of the Defects Liability Period, release the remainder of any Security held by the Contractor as at the date of expiry of the Defects Liability Period.

20 INTELLECTUAL PROPERTY RIGHTS

20.1 Licence to use Intellectual Property Rights

- (a) The Subcontractor grants IDEC an irrevocable, royalty free, transferable licence, including a right to sublicense, to use the Subcontractor's Intellectual Property Rights existing at the date of this Subcontract to the extent necessary for IDEC and the Principal to make full use of the Subcontract Works for all purposes.
- (b) All Intellectual Property Rights which are created by the Subcontractor or its Personnel as a result of performance of the Subcontract Works:
 - (i) immediately vest in IDEC upon their creation;
 - (ii) the Subcontractor must disclose their existence to IDEC promptly after they are brought into existence; and
 - (iii) IDEC grants the Subcontractor a revocable royalty free licence, including a right to sublicense, to use those Intellectual Property Rights to the extent necessary to perform the Subcontract Works.
- (c) The Subcontractor warrants to IDEC that the exercise of any of the Intellectual Property Rights granted by the Subcontractor under this clause 20.1 will, if they are exercised in accordance with this clause 20.1, not infringe the Intellectual Property Rights of any third party.

20.2 Moral rights

The Subcontractor consents, and must ensure its Personnel consents, to IDEC infringing any Moral Rights that the Subcontractor and its Personnel may have or become entitled to in any Work created in the course of performing the Subcontract Works. For the purpose of this consent, 'Work' has the meaning given to that term in the *Copyright Amendment (Moral Rights) Act 2000* (Cth) and 'Moral Rights' refers to any right arising under the provisions of that legislation.

20.3 Survival

The obligations of the Subcontractor under this clause 20 survive the expiration or termination of this Subcontract.

21 CONFIDENTIAL INFORMATION

21.1 Subcontractor obligation to keep confidential

- (a) The Subcontractor must keep confidential, and not use or disclose, the Confidential Information and must immediately notify IDEC if the Subcontractor becomes aware of any unauthorised use or disclosure of the Confidential Information.
- (b) The Subcontractor may disclose Confidential Information to its professional advisers and any of its Personnel who have a need to know the Confidential Information to enable the Subcontractor to perform its obligations under this Subcontract.

21.2 Exceptions

Clause 21.1(a) does not apply to information that:

- (a) was rightfully in the possession of the Subcontractor and not subject to an obligation of confidentiality owed by the Subcontractor to IDEC;
- (b) is or becomes available in the public domain (other than as a result of a breach of this Subcontract); or
- (c) is required to be disclosed by Legislative Requirements or the requirements of a stock exchange, but only to the extent that the information is required to be disclosed and the Subcontractor provides IDEC with reasonable notice prior to the disclosure of the information (including a copy of any announcement that will be published as a result of the disclosure).

21.3 Consequence of wrongful disclosure

The Subcontractor accepts responsibility for any use or disclosure of Confidential Information contrary to clause 21 and will indemnify IDEC for any damage, loss, cost or expense suffered by IDEC in connection with any such use or disclosure.

21.4 Survival

The obligations under this clause 21 continue for a period of six years from the earlier of the expiration or termination of this Subcontract.

22 PPSA

22.1 Security Interest

- (a) The parties acknowledge that this Subcontract may constitute a Security Interest in favour of IDEC.
- (b) If IDEC determines that this Subcontract (or a transaction in connection with it) is or contains a Security Interest, the Subcontractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which IDEC asks and considers necessary for the purposes of:

- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (ii) enabling IDEC to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
- (iii) enabling IDEC to exercise rights in connection with the Security Interest.
- (c) IDEC is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).
- (d) The Subcontractor must notify IDEC as soon as the Subcontractor becomes aware of any of the following:
 - (i) if any Personal Property which does not form part of IDEC's Personal Property becomes an Accession to IDEC's Personal Property and is subject to a Security Interest in favour of a third party;
 - (ii) if any of IDEC's Personal Property is located or situated outside Australia or, upon request by IDEC, of the present location or situation of any of IDEC's Personal Property; or
 - (iii) if the Subcontractor parts with possession of IDEC's Personal Property.
- (e) The Subcontractor must not:
 - (i) create any Security Interest or lien over any of Personal Property that IDEC has a Security Interest (other than Security Interests granted in favour of IDEC);
 - (ii) sell, lease or dispose of its interest in Personal Property that IDEC has a Security Interest in;
 - (iii) give possession of the Subcontractor's Personal Property that IDEC has a Security Interest or IDEC's Personal Property to another person except where IDEC expressly authorises it to do so;
 - (iv) permit any of IDEC's Personal Property to become an Accession to or Commingled with any asset that is not part of the site within IDEC's ownership or control; or
 - (v) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving IDEC 15 Business Days notice.
- (f) Everything the Subcontractor is required to do under this clause 22 is at the Subcontractor's expense.

22.2 Confidentiality

Neither IDEC nor the Subcontractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Subcontractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 22 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) (b), (d) and (e) of the PPSA.

22.3 Confidentiality

In this clause 22, the terms 'Security Interest', 'Financing Statement', 'Verification Statement', 'Personal Property', 'Accession' and 'Commingled' have the meanings given to them in the PPSA.

23 QUALITY ASSURANCE

23.1 Quality Assurance System

The Subcontractor must:

- (a) implement and carry out the Subcontract Works in accordance with the Quality Assurance System; and
- (b) allow IDEC access to the Subcontractor's Quality Assurance System at all reasonable times for purposes of quality monitoring and auditing.

23.2 Purpose of Quality Assurance System

The Subcontractor's implementation of, or compliance with, the Quality Assurance System does not relieve the Subcontractor of its obligations under this Subcontract.

24 INSPECTION AND INFORMATION

24.1 IDEC to be kept fully informed

The Subcontractor must keep IDEC fully informed in respect to all aspects of the Subcontract Works.

24.2 Records

The Subcontractor must keep and maintain accurate accounts, records (including information stored by or accessible by computer or other electronic means or technology) and timesheets relating to the performance of the Subcontract Works.

24.3 Inspection and review

At all reasonable times, IDEC (by itself or by its agents) may inspect and review performance of the Subcontract Works and the records and information created by the Subcontractor in the performance of the Subcontract Works, and on request by IDEC, IDEC may itself (or may require the Subcontractor to) take or arrange for copies of any such records and information.

24.4 Warranty Deed

If required to do so by IDEC, the Subcontractor must complete and execute a Deed of Warranty in the form set out in Schedule 6 in favour of the Principal and IDEC.

25 ASSIGNMENT AND SUBCONTRACTING

25.1 Assignment or subcontracting by Subcontractor

The Subcontractor must not subcontract any of the Subcontract Works or assign this Subcontract or any right, benefit or interest under this Subcontract without the prior written consent of IDEC, which may not be unreasonably withheld. IDEC may impose conditions on any such consent. No consent by IDEC under this clause 25.1 will relieve the Subcontractor of any of its obligations under this Subcontract and the Subcontractor will be liable to IDEC for the acts or omissions of its subcontractors.

25.2 Assignment by Contractor

IDEC may assign or novate this Subcontract (including to the Principal) or assign a right under this Subcontract by notice to the Subcontractor. The Subcontractor must execute any document reasonably required by IDEC to affect its rights under clause 25.2.

26 GENERAL

26.1 Relationship

The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.

26.2 Amendments

This Subcontract may only be amended by written agreement between all parties.

26.3 Counterparts

This Subcontract may be executed in any number of counterparts. All counterparts together make one instrument.

26.4 No merger

The rights and obligations of the parties under this Subcontract do not merge on completion of any transaction contemplated by this Subcontract.

26.5 Entire agreement

- (a) This Subcontract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this Subcontract.

26.6 Further assurances

Each party must do all things reasonably necessary to give effect to this Subcontract and the transactions contemplated by it.

26.7 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this Subcontract does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this Subcontract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

26.8 Governing law and jurisdiction

- (a) The law stated in Schedule 1 governs this Subcontract (**Governing Law**).
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts of the Governing Law and courts competent to hear appeals from those courts.

26.9 Severability

A clause or part of a clause of this Subcontract that is illegal or unenforceable may be severed from this Subcontract and the remaining clauses or parts of the clause of this Subcontract continue in force.

26.10 Joint and several liability

If the Subcontractor comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons):

- (a) the obligations and liabilities of those persons is joint and several;
- (b) those persons must notify IDEC of their representative, who must have authority to bind the Subcontractor and each of those persons; and
- (c) the Subcontractor must not alter its legal status without the prior written consent of IDEC.

26.11 Costs

Each party bears its own costs in relation to the preparation, negotiation and signing and performance of this Subcontract.

26.12 Rights cumulative

Unless expressly stated otherwise in this Subcontract, the rights and remedies under any indemnity or otherwise provided under this Subcontract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

26.13 Discretion

Where IDEC may exercise any right or discretion or make any decision under this Subcontract, IDEC may do so in its absolute discretion, conditionally or unconditionally, and without being required to give reasons or act reasonably. This clause 26.13 applies unless this Subcontract expressly requires otherwise.

27 NOTICE

- (a) A notice, consent or communication under this Subcontract is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given by hand to that person's address, sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address or sent by fax to that person's fax number (provided that the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient) or sent by email to that person's email address.
- (b) A notice, consent or communication delivered under clause 27(a) is given and received:

- (i) if it is hand delivered or sent by fax or email by 5.00pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) if it is hand delivered or sent by fax or email after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day; and
 - (iii) if it is sent by post, three Business Days after posting.
- (c) A party's address, fax number and email address are those set out in Schedule 1, or as one party may notify the other of any changes in writing.

28 FORCE MAJEURE

28.1 Notice and suspension of obligations

If a party is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other party notice of that fact, including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under this Subcontract (other than an obligation to pay money) of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event, as long as the Force Majeure Event continues.

28.2 Effort to overcome

- (a) Subject to Clause 28.1(b), a party claiming a Force Majeure Event must use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.
- (b) The party claiming a Force Majeure Event:
 - (i) need not contest the validity or enforceability of any Legislative Requirement by way of legal proceedings; and
 - (ii) may act at its complete discretion when dealing with any industrial dispute that is specific to its own workforce.

28.3 Alternative supply

During any period in which the Subcontractor is not performing obligations because of a claimed Force Majeure Event, IDEC may, in its absolute discretion, obtain the relevant elements of the Subcontract Works from another source, and make alternative arrangements for the performance, whether by another person or otherwise, of any obligation that the Subcontractor is not performing, without incurring any liability to the Subcontractor. On conclusion of the Force Majeure Event, IDEC will direct a variation under clause 11.1 omitting that much of the Subcontract Works that were performed by another and the value of those omitted Subcontract Works will be determined under clause 11.2 and the Subcontract Sum reduced accordingly.

28.4 Termination

If a Force Majeure Event continues for more than 90 days, IDEC may immediately terminate this Subcontract by giving ten Business Days notice to the Subcontractor.

29 MEDIA

29.1 Subcontractor shall not:

- (a) Make any statements or releases to the media concerning the Works, the Project or this Subcontract; or
- (b) Discuss any aspect of the Works, the Project or this Subcontract with any government department, agency or statutory authority, without the prior Approval of Contractor