

SCHEDULE 11 - FORM OF SUBCONTRACTOR WARRANTY DEED

This Deed is made on 20

Between

_____ ABN _____ (Principal)

and

Wiley & Co Pty Ltd ABN 40 010 604 869 (Contractor)

and

_____ ABN _____ (Subcontractor)

Operative Provisions

1 Definitions

In this Deed:

“**Contract**” means the contract dated _____ between the Principal and the Contractor in respect of the Works.

“**Contractor**” means the person stated in the Schedule.

“**Subcontract Work and Products**” means the works and/or products stated in the Schedule.

“**Warranty Period**” means the period stated in the Schedule.

“**Works**” means the works described in the Schedule.

2 Warranty

The Subcontractor warrants that all work performed and all materials supplied by the Subcontractor as part of the Subcontract Work and Products will:

- 2.1 comply in all respect with the requirements of the Contract; and
- 2.2 to the extent that the quality of materials or standard of workmanship is not specified in the Contract, comply with the requirements of law and be of merchantable quality and be fit for the purposes for which they are required.

3 Replacement or making good subcontract Work and Products

3.1 The Subcontractor must as its cost make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work and Products which, within the Warranty Period, are found to:

- 3.1.1 be of a lower standard or quality than referred to in Clause 2 of this Deed; or
- 3.1.2 have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.

3.2 The liability of the Subcontractor under this clause 3 is reduced to the extent that deterioration is caused by:

- 3.2.1 mishandling, damage before installation, or incorrect installation, in each case caused by others;
- 3.2.2 normal wear and tear; or
- 3.2.3 incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor.

4 Making good works

The Subcontractor must at its cost carry out any work necessary to:

- 4.1 any part of the works to satisfy its obligations under clause 3 of this Deed; and
- 4.2 restore or make good the Works after satisfying its obligations under clause 3 of this Deed.

5 Indemnity

The Subcontractor indemnifies the Principal or the Contractor against all costs, losses and damages suffered or incurred by the Principal or the Contractor arising out of or in connection with any breach by the Subcontractor of clauses 2 or 3 of this Deed.

6 Notice of Defects

The Principal or the Contractor may notify the Subcontractor in writing if it considers there has been any breach of any provision of this Deed.

7 Time to remedy

The Subcontractor must do everything necessary to remedy all breaches notified to it by the Principal or the Contractor under clause 6 of this Deed within a reasonable time after the Principal's or Wiley's notice.

8 Failure to remedy

- 8.1 If the Subcontractor fails to carry out and complete the works specified in the notice under clause 6 of this Deed within a period determined by the Principal or the Contractor to be reasonable in the circumstances, the Principal or the Contractor may give written notice to the Subcontractor that the Principal or the Contractor intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
- 8.2 If the Subcontractor fails to complete the work by the date specified in the notice given pursuant to clause 8.1, the Principal or the Contractor may have the work carried out by others, and the Subcontractor indemnifies the Principal or the Contractor against all costs, losses and damages suffered or incurred by the Principal or the Contractor in doing so.

9 Urgent action by Principal or the Contractor

- 9.1 The Principal or the Contractor may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 2 of this Deed.
- 9.2 The Subcontractor agrees that the Principal or the Contractor taking such action does not affect any obligation of the Subcontractor under this Deed.
- 9.3 The Subcontractor indemnifies the Principal or the Contractor against all costs, losses and damages suffered or incurred by the Principal or the Contractor in taking that action.

10 Operation of Deed

This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal or the Contractor.

Schedule

- 1 **Contractor:** **Wiley & Co Pty Ltd ABN 40 010 604 869**
- 2 **Subcontract Work and Products:** _____
- 3 **Warranty period:** _____
- 4 **Works:** _____

Executed as a Deed.

Executed by _____)
ABN _____)
 in accordance with Section 127 of the *Corporations*)
Act 2001(Cth) in the presence of:)

Director
 Full name
 Usual address
 Director (or Company Secretary)
 Full Name
 Usual address

Executed by Wiley & Co Pty Ltd ABN)
40 010 604 869 in accordance with Section 127 of)
 the *Corporations Act 2001*(Cth) in the presence of:)
)

Director
 Full name
 Usual address
 Director (or Company Secretary)
 Full Name
 Usual address

Executed by _____)
ABN _____)
 in accordance with Section 127 of the *Corporations*)
Act 2001(Cth) in the presence of:)

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