



GENERAL CONDITIONS OF SUBCONTRACT – LONG FORM V4.0 11/16

Wiley & Co Pty Ltd ABN 40 010 604 869

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Subcontract general conditions

1 Main obligations

Subcontractor's main obligations

- 1.1 The subcontractor must execute and complete the subcontract works in strict accordance with this subcontract. The scope of the subcontract works is stated in schedule 2. The subcontractor must also rectify all defects in the subcontract works, whether or not those defects are notified to it by Wiley.
- 1.1.1 The subcontractor must perform the works expeditiously and complete the subcontract works within the period stated in item 11 of schedule 1 and in accordance with part 9.
- 1.1.2 The subcontractor must apply standards of workmanship and use materials that strictly comply with, or exceed, those required by this subcontract.
- 1.1.3 The subcontractor must manage its industrial relations with its employees to ensure that no industrial action delays the progress of the subcontract works required under part 9.
- 1.1.4 The subcontractor must strictly comply with all legislative requirements that apply to the subcontract works or the Project generally.
- 1.1.5 The subcontractor must perform its obligations in a way that does not cause Wiley to breach the head contract.
- 1.1.6 The subcontractor must also ensure that it does everything necessary, in performing the subcontract works, to allow Wiley to enforce all its rights under the head contract.

Subcontractor's warranties

- 1.2 The subcontractor warrants each of the following to Wiley:
- 1.2.1 It will strictly comply with clause 1.1.2.
- 1.2.2 It is expert and experienced in subcontract works similar to the scope of subcontract works required under this subcontract.
- 1.2.3 It will employ suitably qualified and experienced employees, agents and subcontractors to strictly discharge the subcontractor's obligations.
- 1.2.4 The site, stated in item 9 of schedule 1, is suitable for the subcontract works.
- 1.2.5 It will not make any claim relating to the suitability of the site.
- 1.2.6 The subcontract sum is sufficient to cover the discharge of all the subcontractor's obligations under this subcontract.
- 1.2.7 It will not claim anything to which it is not entitled.

Subcontractor's indemnity for breach of warranties

- 1.3 The subcontractor must indemnify and continue to indemnify, Wiley against each of the following:
- Any liability or expense incurred by Wiley as a result of a breach by the subcontractor of any of its warranties stated in clause 1.2.
 - All legal costs, without reference to any scale of costs, reasonably incurred by Wiley in resisting any claim, or discrete part of a claim, made by the subcontractor on which the subcontractor wholly fails.

Subcontractor's acknowledgement about completion of the subcontract works

- 1.4 The subcontractor acknowledges and agrees all of the following:
- 1.4.1 Wiley is liable to the Principal to complete all the head contract works which are constituted by the aggregate of the subcontract works, all work required under every other subcontract on this Project and other work Wiley must perform under the head contract.
- 1.4.2 The subcontract Works constitute an essential and integral part of the head contract works.
- 1.4.3 The subcontract Works are required only because Wiley is obliged to perform the head contract works.
- 1.4.4 The subcontract works must, therefore, be performed and completed in a way that the subcontract works are fully integrated with all other work under other subcontracts and other work Wiley must perform under the head contract.
- 1.4.5 The subcontract works are, therefore, not complete under this subcontract until all other works that abut, are integrated with or rely upon the subcontract works are complete.
- 1.4.6 The subcontractor's failure to comply with its obligations under clause 9.3 is likely to cause Wiley to incur additional costs, including liquidated damages under the head contract.
- 1.4.7 The subcontract works are, therefore, complete (except for defects that Wiley authorises the subcontractor to rectify after completion) only when they are complete in accordance with the subcontractor's acknowledgement and agreement expressed in this clause 1.4.

Wiley's main obligations

- 1.5 Wiley must pay the subcontract sum in accordance with this subcontract, provided the subcontractor complies with its obligations to perform and complete the subcontract works in accordance with the subcontract.
- 1.5.1 The subcontract sum is stated at item 2 of schedule 1. Also stated in item 2 of schedule 1 are the following:
- Item 2.1: The component of the subcontract sum that is lump sum.
 - Item 2.2: The component of the lump sum component of the subcontract sum stated in item 2.1 of schedule 1 that is payable on the subcontractor delivering the documents required under clause 4.17.

- Item 2.3: The component of the subcontract sum that is payable under any schedule of rates or bills of quantity by reference to a re-measure of that part of the subcontract sum to which any schedule of rates or bills of quantity apply.
- Item 2.4: The part of the subcontract sum that relates to provisional work.

2 Administration

Wiley's project manager as certifier

- 2.1 Wiley has appointed its project manager for the project as the certifier under clause 11.8.
- 2.1.1 Wiley's project manager may appoint a delegate as a certifier.

Subcontractor must comply with instructions from Wiley

- 2.2 The subcontractor must comply with all written instructions, directions and notices given by Wiley.
- 2.2.1 The subcontractor is not entitled to rely, for any purpose whatsoever, on any instruction, direction or notice given by Wiley that is not given in writing.

Supervision by Wiley

- 2.3 Wiley or its agents will only be available for supervision during the normal working hours for the project as directed by Wiley, unless special arrangements are made.
- 2.3.1 Where Wiley supervision is required outside the normal working hours for the project, all costs incurred by Wiley for that supervision and the cost of any necessary additional security will be payable to Wiley by the subcontractor as a debt.
- 2.3.2 Wiley will be liable to pay the subcontractor for the subcontractor's out-of-hours supervision only if the subcontractor is entitled to be paid under another provision of this subcontract.

Subcontractor's supervision

- 2.4 Each subcontractor representative must be fluent in written and spoken English to represent it under this subcontract.
- 2.4.1 The subcontractor's representatives must, at all times, be fully conversant with the subcontract works and the subcontractor's obligations under this subcontract, particularly the requirements of the program currently applicable under clause 9.2, and the subcontractor's workplace health and safety obligations.
- 2.4.2 The subcontractor's representatives are authorised by the subcontractor to represent it in relation to all matters under this subcontract.
- 2.4.3 All instructions given by Wiley under this subcontract will be given to the subcontractor's representatives.
- 2.4.4 Matters within the knowledge of the subcontractor's representatives are deemed to be within the knowledge of the subcontractor.
- 2.4.5 The subcontractor's foreman must personally supervise all work performed on site by the subcontractor and ensure that work is performed strictly in accordance with this subcontract.

- 2.4.6 Except where a subcontractor representative resigns from the employment of the subcontractor, is too ill to work or dies, the subcontractor must get Wiley's prior written consent to change any of its representatives.

Wiley may exclude the subcontractor's representative, foreman or workers

- 2.5 Wiley, at any time, in its sole discretion, may instruct the subcontractor to replace, and exclude from the site, its representative, its foreman or any worker.
- 2.5.1 If Wiley does require the subcontractor to replace, and exclude from the site, any of its personnel, the subcontractor must promptly appoint a replacement.

Sub-subcontracting

- 2.6 The subcontractor must not sub-subcontract any of its obligations under this subcontract without first getting the written consent of Wiley to any sub-subcontract.
- 2.6.1 The terms of each sub-subcontract must be not inconsistent with the terms of this subcontract.
- 2.6.2 Each sub-subcontract must contain a term that the sub-subcontractor consents to an assignment of the subcontractor's rights and obligations under the sub-subcontract to Wiley if required by Wiley.
- 2.6.3 If item 3 of schedule 1 states that the subcontractor must obtain a deed of undertaking from a sub-subcontractor, the subcontractor must ensure that the relevant sub-subcontractor gives Wiley a written undertaking in the form set out in schedule 10, which must be delivered to Wiley before the subcontractor commences any subcontract works.

Subcontractor's project personnel

- 2.7 The subcontractor must, within 5 days after this subcontract is formed give to Wiley a list of all site employees, suppliers, sub-subcontractors, agents and consultants that the subcontractor intends to employ or engage to perform the subcontract works.
- 2.7.1 The subcontractor must, at all times, maintain on the site a list of all its employees and the employees of the sub-subcontractors involved in the performance of the subcontract works. The subcontractor must promptly give that list to Wiley at any time Wiley makes a written request for that list.
- 2.7.2 Wiley may, in its absolute discretion, instruct the subcontractor that any of its proposed employees, suppliers, sub-subcontractors, agents or consultants is unacceptable to Wiley. In this case, the subcontractor must not employ or engage any person or organisation that Wiley has instructed the subcontractor is unacceptable to Wiley to be engaged in the performance of the subcontract works.
- 2.7.3 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to Wiley exercising its discretion under clause 2.7.2 or the subcontractor's compliance with an instruction given under that clause.

Site meetings

- 2.8 The subcontractor's representative must attend and participate in all site meetings called by Wiley.
- 2.8.1 The subcontractor's representative must be conversant with the subcontract works and is deemed to have authority to bind the subcontractor to decisions reached at these meetings.
- 2.8.2 The subcontractor must implement all actions identified and requested at these meetings to give effect and full force to the instructions given by Wiley and noted in the minutes of that meeting. Minutes of meetings constitute written instructions by Wiley.

Subcontractor's financial capability

- 2.9 The subcontractor must satisfy Wiley at all times that it has the financial capability to perform all its obligations under this subcontract.
- 2.9.1 Wiley may, at its cost, at any time up to the expiration of the defects rectification period under this subcontract require that independent financial experts appointed by Wiley conduct a financial audit of the financial capacity of the subcontractor.
- 2.9.2 The subcontractor must comply with all reasonable requests of the financial expert appointed by Wiley to provide financial statements, bank records and other financial information to allow the financial expert to form an informed opinion of the subcontractor's financial capability to perform its obligations under this subcontract.
- 2.9.3 The subcontractor must allow the financial expert to attend at any place of business of the subcontractor and inspect any financial data kept by the subcontractor in relation to the subcontractor's business.
- 2.9.4 The financial expert must keep confidential all information given to it by the subcontractor.
- 2.9.5 Wiley must instruct the financial expert to report to Wiley only on whether or not, in the reasonable professional opinion of the financial expert, the subcontractor is financially capable of performing all outstanding obligations under this subcontract.

3 Constitution of the subcontract and documents generally**Documents constituting the subcontract**

- 3.1 This subcontract is constituted by the documents stated in clause 1 of the formal instrument of subcontract.

The head contract

- 3.2 This subcontract is subject to the following in respect of the head contract:
- 3.2.1 Any provision of the head contract that gives Wiley wider rights than the subcontractor has under this subcontract in relation to the subcontract works does not entitle the subcontractor to any wider, or different rights than stated in this subcontract.
- 3.2.2 The subcontractor must fully cooperate with Wiley in Wiley pursuing Wiley's rights under the head contract relating to the subcontract works. The cost of that cooperation, if required, forms part of the subcontract sum. The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to that cooperation.
- 3.2.3 Subject to the subcontractor strictly complying with clause 10.7, if the subcontractor requests Wiley to do so, Wiley will actively prosecute any rights and benefits under the head contract that may lawfully accrue to the subcontractor in relation to the subcontract works. The subcontractor must pay all costs and expense incurred by Wiley in complying with a request under this sub-clause.

Documents from Wiley

- 3.3 Wiley must supply, or make available, to the subcontractor 1 copy of each document relating to the subcontract works. Additional copies of those documents can be made available upon request at the subcontractor's cost.
- 3.3.1 The following applies to any document given to the subcontractor by Wiley:
- They remain Wiley's property and must be returned to Wiley on a written request being made.
 - They must not be used, copied or reproduced for any purpose other than the performance of the subcontract works or the performance of the subcontractor's obligations under this subcontract.
- 3.3.2 Wiley will maintain a list of all drawings and other design documents that records the latest version of each document and make that list available to the subcontractor online.
- 3.3.3 The subcontractor must ensure that at all times it is using the latest issue of each drawing

Subcontractor to supply documents

- 3.4 The subcontractor must give to Wiley the following documents in the electronic format notified by Wiley and the respective number of copies stated in item 2.3 of schedule 2 or elsewhere in the subcontract documents (if not stated, 3 copies of each):
- Shop drawings.
 - Manuals.
 - As-constructed drawings.
 - Any other documents mentioned in item 2.3.1 of schedule 2.
- 3.4.1 Wiley is not required to check subcontractor-supplied documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the subcontract.

- 3.4.2 Copies of documents supplied by the subcontractor will be Wiley's property but must not be used or copied otherwise than for the use, repair, maintenance or alteration of the subcontract works.

Shop drawings

- 3.5 Where shop drawings are to be supplied by the subcontractor, the subcontractor must submit to Wiley for approval the number of copies stated in any specification relating to the subcontract works.
- 3.5.1 The subcontractor must submit shop drawings to Wiley for approval in a format and at the times that will allow Wiley to comply with its obligations under the head contract, including obligations under any specifications that relate to the subcontract works.
- 3.5.2 Approval of the shop drawings by Wiley will not relieve the subcontractor from its obligations to comply with this subcontract.

Resolution of discrepancies

- 3.6 If, after this subcontract is formed, the subcontractor discovers a discrepancy within the subcontract documents, the subcontractor must immediately seek Wiley's instructions to resolve the discrepancy.
- 3.6.1 The subcontractor must comply with instructions from Wiley's project manager, or his or her delegate, and the subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to the resolution of the discrepancy.
- 3.6.2 Wiley will, subject to Wiley giving the subcontractor instructions to the contrary, resolve those discrepancies by applying the following rules:
- The requirement that requires the higher standard of materials prevails.
 - The requirement that requires the higher standard of workmanship prevails.
 - The requirement that requires the most work prevails.
 - The requirement that requires the higher capacity or higher performance prevails.

4 The subcontract works

Construction in accordance with subcontract

- 4.1 The subcontractor must perform the subcontract works in accordance with the subcontract, the design (if any) developed under part 6 and in accordance with the program currently applicable under clause 9.2.
- 4.1.1 The subcontractor must also perform the subcontract works in accordance with the instructions from Wiley given under this subcontract.

Proposed variations to subcontract works

- 4.2 Wiley may instruct the subcontractor to price work involved in a proposed variation to the subcontract works. The instruction may state the time within which the subcontractor is to give the price.

- 4.2.1 The subcontractor's price must separately detail each of the following that is applicable to the work involved in the proposed variation.
- Any additional labour to be caused by the proposed variation.
 - The labour to be made unnecessary by the proposed variation.
 - The additional materials to be caused by the proposed variation.
 - The materials that will be made unnecessary by the proposed variation.
 - Any additional design or certification costs associated with the proposed variation.
 - Any additional on-site and off-site overheads to be caused by the proposed variation.
 - Any on-site and off-site overheads that will be made unnecessary by the proposed variation.
 - The subcontractor's margin on any nett additional work.
 - Alternatively to all the above bullet points, the rates and prices applicable under this subcontract to the proposed variation.
 - Any delay the subcontractor anticipates that performance of the proposed variation will cause to the subcontract works.
- 4.2.2 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to preparing prices for proposed variations it is required to give under this clause.

Wiley may instruct variations to the subcontract works

- 4.3 Wiley, at any time up to the expiry of the defects rectification period under this subcontract, may give the subcontractor an instruction for a variation to the subcontract works. The subcontractor must comply with the instruction.
- 4.3.1 A variation is a change to the scope of the subcontract works, stated in schedule 2, that requires the subcontractor to perform more, less or different work to that stated in schedule 2.
- 4.3.2 An instruction that Wiley considers is an instruction for a variation must be in writing. It will state that it is a variation instruction and will give sufficient detail of the variation for the subcontractor to understand the extent to which the subcontract works needs to be altered to accommodate the variation. If an adjustment to the subcontract sum has already been agreed in relation to the variation, the variation instruction will also state that agreed adjustment.
- 4.3.3 An instruction identified by Wiley as a 'variation' does not, of itself, mean that it is a variation instruction. Instructions for variations will only be those that actually require the subcontractor to change the subcontract works or the obligations the subcontractor must perform under this subcontract.
- 4.3.4 No instruction given by Wiley for a variation, whether given under clause 4.3.2 or claimed as a variation by the subcontractor under clause 4.3.5, will relieve the subcontractor from its obligations under this subcontract.

- 4.3.5 If the subcontractor considers that any written instruction from Wiley is a variation instruction, but that instruction does not state that it is variation, the subcontractor must give Wiley written notice that it considers that instruction is for a variation. That notice must be given before the earlier of the following:
- The subcontractor starts any work to which the instruction relates.
 - The number of business days after the instruction is given stated in item 4 of schedule 1.
- 4.3.6 If the subcontractor does not strictly comply with clause 4.3.5 in relation to any instruction not given as a variation, the subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to what the subcontractor says is the additional work.
- 4.3.7 The subcontractor, in addition to the requirements of this clause, must, if it is entitled to do so, claim payment for that variation in accordance with clause 10.3.
- 4.3.8 If Wiley deletes any subcontract Works under a variation instructed under this clause, Wiley may engage another contractor to perform that deleted work and the subcontractor is not entitled to payment, damages or compensation and must not claim any money or other relief in relation to the deletion or the engagement of another contractor to perform any deleted work.

Day work

- 4.4 Wiley may direct that a variation to the subcontract works be performed and recorded as day work.
- 4.4.1 If Wiley instructs the subcontractor to keep day work records, the subcontractor must record particulars of all resources used by the subcontractor for the execution of the day work. At the end of each day, the subcontractor must give to Wiley the particulars and copies of time sheets, wage sheets, invoices, receipts and other documents evidencing the cost of the day work, and have those records approved in writing each day by Wiley's project manager or his or her delegate.
- 4.4.2 Wiley may instruct the manner in which matters are to be recorded and the subcontractor must comply with that instruction.
- 4.4.3 The subcontractor will be entitled to be paid for day work only if all of the following apply:
- The subcontractor has a written instruction from Wiley that states that the instruction is given under clause 4.4.
 - The instruction also states the rates that are payable for that work.
 - The subcontractor has records, approved by Wiley's project manager under clause 4.4.1.
 - The subcontractor has made a valid claim under clause 10.3.

Provisional work

- 4.5 Wiley is not liable to pay for an item of provisional work unless the subcontractor actually performs some work within the provisional item of work. Wiley may give the subcontractor an instruction relevant to any item of provisional work stated at item 2.4 of schedule 2. Those instructions, depending on the nature of the provisional work, may be in relation to any of the following:

- The materials to be used that are different from those mentioned in item 2.4 of schedule 2.
 - The supplier, or a panel of suppliers, with whom the subcontractor must contract to obtain the material.
 - Any sub-subcontractors with whom the subcontractor is to subcontract for the performance of the provisional work.
 - The quantity of the work to be performed.
 - The locations where the work is to be performed.
 - Alternatively, to all of the above points, to delete the item of provisional work from the work under the subcontract.
- 4.5.1 The subcontractor is entitled to be paid for any provisional work it performs in accordance with a valuation determined by Wiley under clause 10.4.
- 4.5.2 If Wiley deletes any item of provisional work, Wiley may engage another contractor to perform that work.
- 4.5.3 The subcontractor is not entitled to payment, damages or compensation and must not claim any money or other relief in relation to the deletion or the engagement of another contractor to perform any provisional work.

Materials and standard of work

- 4.6 The subcontractor must use the materials and standards of workmanship required by the subcontract. In the absence of any express requirement to the contrary, the subcontractor must use suitable new materials.
- 4.6.1 Except to the extent that the subcontract otherwise provides, the subcontractor must supply everything necessary for the proper performance of the subcontractor's obligations and discharge of the subcontractor's liabilities under the subcontract.
- 4.6.2 At a minimum, the subcontractor must use the materials and standards of workmanship required by any relevant Australian Standard.
- 4.6.3 As soon as practicable after entering into the subcontract, the subcontractor must place orders for and take all measures necessary to ensure the supply of all materials and goods necessary to carry out and complete the subcontract works in accordance with Part 9.
- 4.6.4 If delays in delivery of materials or plant are anticipated, the subcontractor must promptly notify Wiley to discuss alternatives.
- 4.6.5 If any materials specified for the subcontract works are required to be installed or applied by a licensed applicator, the subcontractor must notify Wiley and obtain Wiley's approval prior to commencement of the relevant part of the subcontract works.

Subcontractor is responsible for verifying sizes, dimensions and set out

- 4.7 The subcontractor must verify all sizes, dimensions and set out details for the subcontract works and must account for all other works that abut, are integrated with or rely upon the subcontract works. Subject to clause 4.7.1, any dimensions or details issued by Wiley or the Principal under the head contract are issued as a guide only.

- 4.7.1 Wiley will give the subcontractor datum points, reference levels and reference grid lines sufficient to allow the subcontractor to set out the subcontract works at each main level of the project. The subcontractor is responsible for all other necessary set out for the subcontract works in accordance with clause 4.7.
- 4.7.2 Subject to clause 4.7.3, the subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to any inaccuracies in sizes, dimensions or set out details provided by Wiley or the Principal under the head contract.
- 4.7.3 The subcontractor may be entitled to additional payment if the set out details given to it by Wiley under clause 4.7.1 are incorrect and the subcontractor has made a valid claim under clause 10.3.

Co-ordination of fixings, penetrations etc.

- 4.8 The subcontractor must co-operate with other subcontractors and Wiley in performing its work and comply with Wiley's instructions.
- 4.8.1 The subcontractor must, in liaison with Wiley, determine the locations and sizes of all openings through pavements, floors, walls and roofs necessary for the performance of the subcontract works, to be formed as the project proceeds. The subcontractor must ensure that the information is given to Wiley in sufficient time to meet the requirements of the program then currently applicable under clause 9.2.
- 4.8.2 The subcontractor must supply and fix accurately in place, in advance of the time for construction stated in the program currently applicable under clause 9.2 anything necessary to be formed in, or incorporated in any other work on the project, for the subcontractor to perform the subcontract works. For example, these include, but are not limited to, the following:
- Fixings.
 - Holding down bolts.
 - Conduits or pipes.
 - Ducts.
 - Noggings.
 - Block-outs or recesses.
 - Penetration forming devices.
 - Starter bars.
- 4.8.3 Wiley may, as an alternative to the subcontractor under this subcontract performing the subcontract works mentioned in clause 4.8.2, require others to build in only those items specially scheduled to be incorporated as part of the other works. This will be done only to the extent that it is impractical, taking into account relevant trade practice, for the subcontractor under this subcontract to properly and adequately secure those items. All other subcontract works required under this subcontract, including fixing in position and temporarily protecting, the items mentioned in clause 4.8.2 are the subcontractor's responsibility.

- 4.8.4 Trade penetrations consisting of sleeves and minor other openings, gap formers or similar will be the responsibility of the subcontractor.
- 4.8.5 All other incidental fixings must be provided and fixed by the subcontractor. The subcontractor will be held to have verified locations of all outlets and equipment and is responsible for attending the closing in, maintaining the position and adjusting and clearing as necessary, building in afterwards and filling, fire-proofing or otherwise making good the penetration left for the subcontractor.
- 4.8.6 In relation to any concrete pour in which any of the things mentioned in clause 4.8.2 are to be incorporated, the subcontractor must ensure that a competent representative of the subcontractor attends the pour and ensures that those things remain in position during the pouring and finishing of the concrete.
- 4.8.7 If the subcontractor does not comply with this clause, Wiley may engage others to perform those obligations. The costs incurred by Wiley in having that work performed will be payable to Wiley by the subcontractor as a debt.

Subcontractor acceptance of design (for certification) and prior work

- 4.9 The subcontractor must satisfy itself that all prior work on the project performed by Wiley or other subcontractors is appropriate for the performance of its subcontract works.
- 4.9.1 The subcontractor must give written notice to Wiley that it considers any prior work inappropriate for the subcontract works before the earlier of the following:
- If the subcontractor knows, or ought to know, that the prior work is inappropriate for the subcontract works, before the subcontractor starts work in relation to the prior work in the relevant area or location.
 - If the subcontractor becomes aware, or ought to have become aware, during the progress of any part of the subcontract works that any prior work is inappropriate, within 24 hours of the subcontractor becoming so aware or within 24 hours of the time at which it ought to have become aware.
- 4.9.2 Commencement of, or continuation with, work in an area (in circumstances where the subcontractor knows, or ought to know, that the prior work is inappropriate) will constitute the subcontractor's acceptance of the suitability of the prior work for the performance of the subcontract works.
- 4.9.3 Only if the prior work is inappropriate and only if the subcontractor has given the notice required by clause 4.9.1, will Wiley be required to take action in relation to the prior work. This action may include, but is not limited to, giving the subcontractor a variation order to make the prior work suitable for the subcontract works or instructing the subcontractor to suspend work in the subject area while Wiley arranges for others to make the prior work suitable.
- 4.9.4 If the prior work is appropriate or, even if it is not and the subcontractor has not complied with clause 4.9.1, the subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to dealing with prior work in the performance of the subcontract works.
- 4.9.5 If the subcontractor must, under any legislative requirement, standard or code, certify the completed subcontract works as compliant with that legislative requirement, standard or code (eg in relation to, but not limited to, electrical work), the subcontractor must satisfy itself that the design of the subcontract works is suitable for that certification on

completion of the subcontract works. If the subcontractor determines that the design of the subcontract works will not allow the subcontractor to certify the subcontract works as compliant with any legislative requirement, standard or code, the subcontractor must promptly notify Wiley, in writing, of the defect or omission in the design that will not allow the subcontractor to give the required certificate.

Subcontractor must rectify all defects in the subcontract works

4.10 The subcontractor must, from the date of the subcontract to the expiration of the defects rectification period, promptly rectify all defects in the subcontract works. A defect is any work within the subcontract works that does not comply with this subcontract.

Defects rectification period

4.11 The defects rectification period commences on the date of completion of the subcontract Works in accordance with clause 4.29 and, subject to clause 4.11.6, continues for the period of 12 calendar months, but may be extended under cause 4.11.4.

4.11.1 The defects rectification period under this subcontract may be extended in accordance with this clause.

4.11.2 At any time up to the expiration of the defects rectification period under this subcontract, the subcontractor must rectify any defect. The subcontractor must promptly perform this obligation whether it has been given an instruction by Wiley or not.

4.11.3 If the subcontractor does not comply with its obligations under clause 4.11.2, Wiley may give the subcontractor a written notice to rectify any defect. The notice will state each of the following:

- The defect that requires rectification.
- The time by which the defect must be rectified.
- Any conditions, or restrictions, on access to the part of the subcontract works in which the defect is located.

4.11.4 If the nature of the defect is such that there is a possibility that the defect may recur, Wiley may extend the defect rectification period in respect of the rectification work only for a period that must be no longer than the duration of the defects rectification period stated in clause 4.11.

4.11.5 The subcontractor must comply with Wiley's notice given under clause 4.11.3.

4.11.6 If a defect, that has been notified to the subcontractor by Wiley under clause 4.11.3, has not been rectified in accordance with Wiley 's instructions, both of the following apply:

- The defects rectification period under this subcontract in respect of the defect notified under clause 4.11.3 will, if the defect is not completed before the expiry of the defects rectification period, be extended to the date on which the defect is rectified and may be further extended under clause 4.11.4.
- Wiley may engage other subcontractors to rectify the defects. In this case, the cost incurred by Wiley in rectifying a defect under this clause will be payable to Wiley by the subcontractor as a debt.

- 4.11.7 The subcontractor must throughout the performance of the subcontract works, regularly prepare its own defects lists and submit them to Wiley together with a statement of the status of the rectification work required for each defect.

Acceptance of defective work

- 4.12 Wiley may accept work that does not strictly comply with the subcontract. If Wiley does so, Wiley may reduce the subcontract sum by taking into account the following:
- The diminution in the value of the work because of the defect.
 - The costs from which the subcontractor is relieved of rectifying the defective work.
- 4.12.1 Wiley is, however, under no obligation to accept defects in the subcontract works.

Protection of the subcontract works and damage

- 4.13 The subcontractor must, from the date the subcontractor is given access to the site to the date of completion of the subcontract Works in accordance with clause 4.29, protect the subcontract works and unfixed materials from all damage, however that damage is caused, and protect unfixed materials from loss or theft. This obligation extends to anything existing on the site at the date the subcontractor gains access to it.
- 4.13.1 The subcontractor must do everything reasonably necessary, having regard to any other work performed concurrently with the subcontract works or after the performance of the subcontract works, which may affect or damage the subcontract works, to ensure the subcontract works, other head contract works generally or adjoining properties, are not damaged.
- 4.13.2 The subcontractor must make good any damage done to the subcontract works or replace any unfixed material lost or stolen during the period stated in clause 4.13 in accordance with clause 4.14.

Reinstatement of damaged subcontract works

- 4.14 If the subcontract works are damaged, or unfixed materials lost or stolen while under the subcontractor's protection under clause 4.13, the subcontractor must promptly rectify any damage to the subcontract works or replace any lost or stolen unfixed materials. The rectification of any subcontract works damaged or the replacement of lost or stolen unfixed materials does not, of itself, relieve the subcontractor from its obligations to complete the subcontract works in strict accordance with the requirements for completion of the subcontract works.
- 4.14.1 Subject to clause 4.14.3, if the subcontractor does not rectify any damage done to the subcontract works or replace any lost or stolen unfixed materials, Wiley may engage other subcontractors to rectify the damage.
- 4.14.2 The cost incurred by Wiley in rectifying damage or replacing materials under this clause will be payable to Wiley by the subcontractor as a debt.
- 4.14.3 Wiley will pay the subcontractor the reasonable costs of the rectification of damage to the subcontract works only if all of the following apply:
- The subcontractor identifies to Wiley another subcontractor or subcontractors who has or have damaged the subcontract works.
 - Wiley is satisfied that the other subcontractor/s caused that damage.

- The subcontract works were sufficiently protected.
- Wiley can recover the reasonable cost of rectification from the other subcontractor/s.

Damage to other works

- 4.15 The subcontractor must take all reasonable care to not damage any work performed by others on the project and any pre-existing work or property of the Principal under the head contract, other than disturbance of other work that is strictly required to perform the subcontract works.
- 4.15.1 Any penetrations made by the subcontractor to any prior work must be made good by the subcontractor as part of its subcontract works for the subcontract sum. This includes the installation of flashings and collars to ensure suitable waterproofing and fire-proofing and architectural features for aesthetics suitable for the Project.
- 4.15.2 Any excavation work must be compacted and placed back in its original condition by the subcontractor.
- 4.15.3 The cost incurred by Wiley in rectifying the damage caused by the subcontractor to other work that is not subcontract works will be payable to Wiley by the subcontractor as a debt.

Manufacturer's recommendations, standards and codes

- 4.16 The provisions of the current Standards Association of Australia Codes are applicable to the subcontract works. The subcontractor must make all necessary arrangements for the attendance on site of a product manufacturer's technical representative prior to commencement of each different type or phase of work and subsequently during the progress of the subcontract works.
- 4.16.1 Full directions and recommendations must be obtained from the manufacturer.
- 4.16.2 The subcontractor must provide and retain on the site copies of the relevant codes as may be required together with the manufacturer's printed instructions for reference as required.
- 4.16.3 The subcontractor must comply with the technical requirements of the manufacturer for each respective product type, system or application, except where the subcontract documents specify otherwise.
- 4.16.4 The subcontractor must make available a competent tradesperson at any time it is necessary for the subcontractor to liaise with the manufacturer's representative during inspections of any relevant installation, to ensure the subcontract works are performed in accordance with this subcontract.
- 4.16.5 Nothing contained in this clause will absolve the subcontractor from any of its obligations or responsibilities elsewhere provided for in the subcontract.

Warranties, manuals, as-built drawings

- 4.17 Prior to the date of completion of the subcontract works, the subcontractor must provide to Wiley the subcontractor Warranty Deed in the form set out in schedule 11, and all documents or things stated in item 2.3.1 or item 2.3.2 of schedule 2 or are required under the subcontract or the head contract in respect of the subcontract works.

- 4.17.1 The subcontractor must ensure that Wiley obtains the benefit of those documents and that it assigns its rights to Wiley before the date of completion of the subcontract works.
- 4.17.2 If stated in item 2 of schedule 1, the subcontract sum includes a discrete payment for the delivery to Wiley of the documents required under this clause. The subcontractor is not entitled to that payment until the subcontractor delivers the required documents that strictly comply with this subcontract.

Proprietary brands

- 4.18 All proprietary brands of materials or equipment must be fixed, installed or applied strictly in accordance with the manufacturer's instructions, directions or specifications.
 - 4.18.1 The subcontractor must check that any proprietary brand of material or equipment proposed under the subcontract can be installed in accordance with the manufacturer's instructions, directions or specifications as soon as it is reasonably possible to do so, but in any event, prior to installation. Where any ambiguity exists between the subcontract and the manufacturer's instructions or specifications, the subcontractor must promptly refer the inconsistency to Wiley for instruction and must comply with Wiley's instructions.
 - 4.18.2 Where a trade name appears in the specification or is shown on the drawings, equal or better materials bearing other trade names may, unless otherwise specified, be used in work, provided they have been first approved in writing by Wiley.
 - 4.18.3 Products bearing the hallmark of the Standards Association of Australia are deemed to be superior to other products and must be used in preference.

Commissioning

- 4.19 The subcontractor must do all things necessary to commission the subcontract works to establish that all systems, plant and equipment comply with the performance requirements stated in the subcontract documents.
 - 4.19.1 The subcontractor must adjust and balance all elements of the subcontract works consisting of systems, plant and equipment until they comply with the performance requirements stated in the specifications.
 - 4.19.2 The subcontractor must comply with Wiley's instructions in relation to the commissioning of the subcontract works.
 - 4.19.3 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to Wiley's instructions regarding the commissioning.

Notices and fees

- 4.20 The subcontractor must pay fees relating to the performance of the subcontract works to authorities having jurisdiction over the subcontract works.
 - 4.20.1 The subcontractor must, at its own expense, comply with and give all notices required by any statute, ordinance, regulation or by-law of any authority that has jurisdiction affecting the subcontract works or the employees, agents and subcontractors of the subcontractor.
 - 4.20.2 The subcontractor must give to Wiley copies of any documents issued by the authorities in connection with the subcontract works within 3 business days of receiving them.

Compliance with legislative requirements

- 4.21 The subcontractor must know and comply with all relevant legislative requirements applicable to the site, the subcontract works and the subcontract at the time this subcontract is formed as stated in clause 16.13.
- 4.21.1 The subcontractor must continually indemnify Wiley against any failure by the subcontractor to comply with any of the relevant legislative requirements.
- 4.21.2 The subcontractor warrants that the subcontract sum is adequate for the subcontractor to meet the cost of compliance with all relevant legislative requirements in force at the time this subcontract is formed.

Examination and testing required by the subcontractor

- 4.22 The subcontractor must perform, where applicable to the subcontract works, at no cost to Wiley, all tests required, or recommended, by any of the following:
- The drawings, specifications and other documents mentioned in items 2.1 & 2.2 of schedule 2.
 - Any design document produced by the subcontractor or its consultants.
 - The manufacturer or fabricator of any element of the subcontract works.
 - The subcontractor's quality systems.
 - Any legislative requirements.
 - Any Australian standard.

Further testing required by Wiley

- 4.23 At any time up to the issue of the final certificate under the head contract, Wiley may instruct the subcontractor to conduct tests additional to those referred to in clause 4.22. An instruction under this clause may specify any of the following:
- The scope of the tests.
 - The method of testing to be used.
 - The time or times at which the test must be done.
 - Who must conduct the test.
 - Who may attend the test.
- 4.23.1 The subcontractor must comply with an instruction given in accordance with this clause.

Results of tests

- 4.24 The subcontractor must promptly make available to Wiley the results of all tests conducted in relation to the subcontract works, whether instructed by Wiley or not.

Costs of further testing instructed by Wiley

- 4.25 If Wiley instructs the subcontractor to conduct a test that is not required by clause 4.22, the following provisions will govern the responsibility for costs of the test:
- 4.25.1 If the aspect of the subcontract works tested does not comply with the subcontract, the subcontractor must pay all costs associated with the test, including any work to make good any damage caused by the test, and must not make any claim for payment, damages or compensation arising out of the test. The cost of the test incurred by Wiley will be payable to Wiley by the subcontractor as a debt.
 - 4.25.2 If the aspect of the subcontract works tested complies with this subcontract the subcontractor is entitled to and may claim, in accordance with clause 10.6, and Wiley must pay to the subcontractor the reasonable costs incurred by the subcontractor in conducting the test, and making good any work damaged by the test.

Unobtainable materials

- 4.26 The subcontractor must allow in the subcontract sum for the subcontract works as specified. If any material is unobtainable, subject to clause 4.26.2, the affected items may be omitted and alternative materials used and the subcontract sum may be adjusted accordingly.
- 4.26.1 The subcontractor must promptly inform Wiley of the unavailability of specified materials and await Wiley's instructions as to what to do about the unavailability.
 - 4.26.2 The subcontractor is not entitled to make any substitution without first getting the written approval of Wiley for the substitution. Wiley's approval may be made subject to reasonable conditions.
 - 4.26.3 Material will not be considered unavailable if its unavailability is due to the subcontractor not placing orders for that material with sufficient time for the delivery of that material to allow the subcontractor to comply with the program currently applicable under clause 9.2.

Urgent protection

- 4.27 If urgent action is necessary to protect the work under the subcontract, other property or people and the subcontractor fails to take the action, Wiley may take the necessary action. The cost incurred by Wiley in taking that urgent action will be a debt due from the subcontractor to Wiley and that cost may be deducted from any money otherwise due from Wiley to the subcontractor under this subcontract.
- 4.27.1 If time permits, Wiley will give the subcontractor prior written notice of Wiley's intention to take action under this clause.

Separable portions

- 4.28 If the program currently applicable under clause 9.2 states that the head contract works must be performed and completed in separable portions, the subcontractor must perform and complete the subcontract works in accordance with the program currently applicable under clause 9.2 to facilitate Wiley completing the head contract works in accordance with the head contract.
- 4.28.1 In addition to clause 4.28, if a part of the subcontract works has reached completion but another part of the subcontract works has not reached completion and the parties cannot agree on the creation of separable portions, Wiley may determine that the respective parts of the subcontract works are separable portions.

Completion of the subcontract works

- 4.29 Separable portions of the subcontract works (if any) and the whole of the subcontract works will be complete, for the purposes of determining the subcontractor's compliance with its obligations to bring the subcontract works to completion by the dates or date for completion when each of the following apply:
- The subcontract works are complete in accordance with the subcontractor's acknowledgement at clause 1.4.
 - The subcontractor has delivered the warranties and manuals etc required by clause 4.17.
 - The subcontract works are complete in accordance with the subcontract except for minor defects.
 - The minor defects do not prevent the subcontract works from being reasonably capable of being used for the purpose stated or implied by the subcontract documents.
 - The subcontractor has prepared a list of minor defects and has given a copy of that defect list to Wiley.
 - Those tests that are required by the subcontract to be carried out and passed before the subcontract works reach completion have been carried out and passed.
 - The subcontractor has done a final clean-up of the subcontract works and has removed all its rubbish and debris as required by this subcontract.

5 General requirements for subcontract works

Protection of people and property

- 5.1 The subcontractor must ensure that its subcontract works are performed in a way that does not cause injury to any person or damage to any property.

Industrial relations

- 5.2 The subcontractor is responsible for all industrial relations with its employees and sub-subcontractors on the site and on any other site at which the subcontractor performs work.
- 5.2.1 The subcontractor must manage industrial relations with its employees in a way that ensures that no industrial action taken by its employees causes any delay to the progress of the subcontract works as required under part 9 or delay to the head contract works generally.
- 5.2.2 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to any industrial relations problem which arises because of any circumstance, whether caused by the subcontractor or not, on the site or any other site occupied by the subcontractor.
- 5.2.3 If instructed by Wiley in writing, the subcontractor must appoint Wiley its agent to deal on its behalf with any industrial relations matters referred to in the written instruction.

Workplace health and safety and safety precautions

- 5.3 The subcontractor is responsible, as follows, under this subcontract and under the Work Health and Safety legislation applicable in any jurisdiction in which the subcontract performs any of the subcontract works, including regulations to and codes of practice published under, that legislation (WH&S legislation):
- As a person in control of a business or undertaking (PCBU) and for the performance of subcontract works.
 - As a person with management or control of a work place (PVMCW) for all the places at which the subcontract works are performed.
- 5.3.1 The subcontractor acknowledges and agrees the following:
- Wiley is the PCBU under the WH&S legislation for the overall performance of the head contract works at the site, which includes the subcontract works performed at the site.
 - Wiley is also the PVMCW under the WH&S legislation for the site to the extent Wiley controls the site.
- 5.3.2 The subcontractor must, in addition to its obligations under this clause and under the WH&S legislation, at its cost, comply with the reasonable directions of Wiley in relation to workplace health and safety and with the health and safety requirements for work at the site as detailed in schedule 7.
- 5.3.3 If the site is part of any operating facility, the subcontractor acknowledges and agrees to the following:
- The Principal under the head contract is the PCBU under the WH&S legislation for the operations at the facility, but excluding the site.
 - The Principal under the head contract is the PVMCW under the WH&S legislation for the operating facility, but excluding the site.
- 5.3.4 If clause 5.3.3 applies, the subcontractor must, in addition to its obligations under this clause and under the WH&S legislation, at its cost, comply with the reasonable directions of the Principal under the head contract in relation to access to or through or use of the facility controlled by the Principal under the head contract.
- 5.3.5 If stated in item 5.1 of schedule 1, the subcontractor must ensure that, at any time it is performing work on site, among its employees on site, is a qualified WH&S officer supervising the health and safety aspects of the performance of the subcontract works.
- 5.3.6 If stated in item 5.2 of schedule 1, the subcontractor must ensure that, at any time it is performing work on site, among its employees on site, is a qualified first aid attendant.
- 5.3.7 If stated in item 5.3 of schedule 1, the site is designated as 'at risk' for Q Fever and the subcontractor must comply with the Q Fever provisions of schedule 7.
- 5.3.8 The subcontractor must also comply with all relevant Australian Standards that relate, in any way, to the performance of the subcontract works.
- 5.3.9 Prior to commencing work on the site, the subcontractor must submit for Wiley's approval a safety plan that sets out the subcontractor's method of work.

- 5.3.10 Wiley may instruct the subcontractor to modify its safety plan to provide for a standard of safety consistent with that provided under the Wiley project safety plan and the subcontractor must comply with Wiley's instructions. This does not relieve the subcontractor from any of its liabilities for safety under the law or under this subcontract.
- 5.3.11 The subcontractor must, at its cost, comply with all requirements of reasonable instructions given by Wiley and any government authority having jurisdiction over workplace health and safety in the area where the work is being performed.
- 5.3.12 The subcontractor must ensure the subcontractor's site safety representative attends all site safety meetings that will be called from time to time.
- 5.3.13 The subcontractor must continually indemnify Wiley against all liability arising out of any breach of the subcontractor's obligations under this clause.

Environmental Management

- 5.4 If stated in item 6 of schedule 1, the subcontractor must ensure the subcontract works and its employees and agents comply with the Wiley project Environmental Management Plan and the environmental requirements for work at a Wiley site as detailed in schedule 8, and any applicable legislation, standards and guidelines for the protection of the environment, whether there is a site-specific environmental management plan for the project or not.
 - 5.4.1 The subcontractor must take all measures and action to prevent causing any environmental harm during the course of carrying out the subcontract works. The subcontractor will actively identify and treat any incident caused directly or indirectly by the subcontractor.
 - 5.4.2 Any and all costs incurred by the subcontractor associated with compliance with the Wiley Environmental Management Plan or any other environmental legislation or guidelines are included in the subcontract sum.
 - 5.4.3 The subcontractor must indemnify Wiley against all claims, penalties, fines, rectification and clean-up costs and any damages as a result of the subcontractor's failure to comply with the environmental management provisions of the subcontract.
 - 5.4.4 Prior to commencing work on the site, the subcontractor must submit to Wiley an Environmental Management Plan that details the subcontractor's work procedure with respect to the environment.
 - 5.4.5 Nothing in this section will relieve the subcontractor from its legal responsibility with respect to the protection of the environment under the law or any other provision of the subcontract.

Quality plan

- 5.5 If stated in item 7 of schedule 1, the subcontractor must establish and maintain a quality plan.
 - 5.5.1 The purpose of the subcontractor's quality plan is to assist the subcontractor to efficiently comply with all its obligations under this subcontract. Accordingly, compliance by the subcontractor with its quality plan will not relieve the subcontractor from any of its obligations under this subcontract.
 - 5.5.2 The subcontractor must actively identify defects in its work and failures to comply with its obligations under this subcontract in accordance with its quality plan. If it finds any non-conformances, it must follow the non-conformance procedure in its quality plan so that the non-conformance is removed so that the subcontractor complies with its obligations.

Wages, employee benefits etc.

- 5.6 The subcontractor must, and must ensure that its subcontractors, consultants and agents, pay all wages, entitlements, taxes and levies to, or on behalf of, or in respect of, its employees in accordance with any relevant award, industrial agreement or legislative requirement.
- 5.6.1 The subcontractor must also comply with the requirements of any building and construction industry standard scheme that requires the subcontractor to pay contribution on behalf, or for the benefit, of the subcontractor's employees and agents.
- 5.6.2 Wiley may, at any time, instruct the subcontractor to give Wiley evidence, in a form satisfactory to Wiley, that it has complied with clauses 5.6 and 5.6.1.
- 5.6.3 If the subcontractor fails to give Wiley the evidence required by clause 5.6.2, Wiley may make those payments. Any payment made by Wiley under this clause will be payable to Wiley by the subcontractor as a debt.

Codes of Practice for the Construction Industry

- 5.7 If the project is in Queensland, the Queensland Code of Practice for the Building and Construction Industry applies to this project, the subcontractor must comply with all of the following:
- 5.7.1 The Queensland Government's Code of Practice for the Building and Construction Industry.
- 5.7.2 The Queensland Governments' Implementation Guidelines to the Code of Practice for the Building and Construction Industry Implementation Guidelines.
- 5.7.3 Schedule 12.

6 Design (if applicable)**Design development**

- 6.1 If stated in item 8.1 of schedule 1, the subcontractor must develop a design for the subcontract works in strict accordance with its scope of subcontract works stated in items 2.1 and 2.2 of schedule 2 and in accordance with the subcontract and head contract in respect of the design of any part of the subcontract works.
- 6.1.1 Any design produced by the subcontractor must be fit for the purpose stated in, or implied by, this subcontract or the head contract documents that relate to the subcontract works.
- 6.1.2 The subcontractor must indemnify, and continue to indemnify Wiley against any liability incurred by Wiley as a consequence of the subcontractor failing to comply with its obligations under this part.

Liaison with Wiley

- 6.2 The subcontractor must ensure that all its consultants involved in developing the design regularly liaise with Wiley to refine and clarify a design that complies with the scope of subcontract works and the subcontract requirements.
- 6.2.1 The involvement of Wiley in that liaison process does not affect, in any way, the subcontractor's obligations under the subcontract.

Approval of design documents by Wiley

- 6.3 The subcontractor must obtain the written approval of Wiley for all "for construction" design documents produced by the subcontractor at least 21 calendar days before those documents are required for the performance of the work shown or described in those documents.
- 6.3.1 The subcontractor must not proceed with any work under design documents produced by the subcontractor until it has obtained approval for those documents from Wiley.
- 6.3.2 Clauses 6.3 and 6.3.1 mean that the subcontractor must do everything necessary to ensure that Wiley's approval is obtained under the following process by at least 21 calendar days before the documents are required for construction so that Wiley can obtain approval for those documents under the head contract:
- Wiley must either approve or reject, with written reasons, any draft design documents as soon as practicable.
 - If Wiley rejects draft "for construction" design documents, the subcontractor must re-submit those documents (amended in accordance with Wiley's written reasons for rejection) within 5 calendar days after receiving the rejection.
 - Wiley must give the subcontractor a written notice approving or rejecting, with written reasons, the re-submitted documents as soon as practicable after receiving them.
 - The subcontractor must continue to resubmit any draft in accordance with this clause until the draft is approved by Wiley.
- 6.3.3 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to the rejection of any draft "for construction" documents which do not comply with the scope of the subcontract works or the requirements of the subcontract.

Approval does not relieve subcontractor from responsibility

- 6.4 Wiley's approval of any "for construction" design documents does not affect, in any way, the subcontractor's obligations to design and construct the work in accordance with the subcontract.

Intellectual property – consultants to the subcontractor

- 6.5 The subcontractor gives, and must obtain from each of its design consultants, one of the following:
- 6.5.1 If required by item 8.2 of schedule 1, and subject to clause 6.5.1.1, an assignment of copyright in the design documents produced by the subcontractor or its consultants to Wiley.
- 6.5.1.1 The intellectual property rights owned by the subcontractor or the subcontractor's design consultants at the date of this subcontract, will not be assigned as stated in clause 6.5.1, but the subcontractor gives, and must obtain from each of the subcontractor's design consultants, a licence to use those pre-existing intellectual property rights in the same terms as stated in clause 6.5.2.
- 6.5.2 If an assignment of copyright is not required by item 8.2 of schedule 1, a licence in favour of Wiley, the Principal under the head contract and the Principal's financiers on the following terms:

- A right to use the design documents produced by that consultant to construct, market, sell or lease the subcontract works on the site.
- A right to use the design documents to rectify defects, make alterations to the project and to maintain the subcontract works.
- An undertaking from each consultant that the unique or characteristic architectural features of the exterior and of the public areas of the subcontract works will not be used by the subcontractor or its consultants on any other project.
- A right and continuing consent from each consultant for each of Wiley, the Principal under the head contract and the Principal's financier to assign the licence to any person.

Moral rights

- 6.6 The subcontractor must also obtain, from each individual person who designs any part of the subcontract works, a written acknowledgement from that person that he or she will not enforce his or her moral rights granted to that person by Part IX the Copyright Act 1966.

7 The site

Description

- 7.1 The site is described in, and any applicable site rules are stated in, item 9 of schedule 1.

Access for other subcontractors

- 7.2 The subcontractor is not entitled to sole possession of any part of the site.
- 7.2.1 The subcontractor acknowledges that Wiley and others will be performing work on the site concurrently with the performance of the subcontract works.
- 7.2.2 The subcontractor must coordinate the subcontract works with all other work being performed on the project before, concurrently with or after the performance of the subcontract works.
- 7.2.3 Wiley may also give the subcontractor instructions in relation to the coordination of its subcontract works with the work of other subcontractors or Wiley.
- 7.2.4 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to the coordination of the performance of the subcontract works with other work being performed on the site on or before the date on which the subcontract works are complete in accordance with clause 4.29.

Access to the site for Wiley

- 7.3 The subcontractor must allow access at all times to the site to Wiley, the Principal, the Principal's invitees [eg employees, agents, buyers, lessees, financiers etc], project consultants and to their respective authorised representatives, to other subcontractors and to others engaged by Wiley or the Principal.

Subcontractor accepts site conditions

7.4 The subcontractor accepts the site conditions. It acknowledges that, before signing the subcontract, it has done each of the following:

- It has inspected all geotechnical and other site information provided to it by Wiley.
- It has checked all available information about the site and its environs.
- It has conducted all necessary inspections and investigations of the site and its environs.
- It has familiarised itself with all usual and likely activities which will occur in the site environs before completion of the subcontract works which are relevant to the subcontractor's ability to discharge its obligations in accordance with the subcontract.

7.4.1 The subcontractor also acknowledges that it has not relied, in any way, on any information about the site that Wiley has given to the subcontractor. Rather, it has relied on its own investigations and interpretations in relation to any of that information.

7.4.2 Wiley gives no warranty regarding the accuracy, or completeness, of any information about the site that Wiley has given the subcontractor.

Claims for unanticipated conditions limited by the head contract

7.5 If the subcontractor discovers a condition that, having regard to clause 7.4, an experienced and competent subcontractor would not have anticipated at the time the subcontract became binding, the subcontractor must accommodate that unanticipated condition and must still strictly comply with the subcontract.

7.5.1 The subcontractor may claim for a variation, in accordance with clause 10.3, and may claim an extension of time, in accordance with clause 9.6, in relation to dealing with unanticipated or latent conditions but only to the extent Wiley is entitled to recover under the head contract after accounting for Wiley's entitlement to recover its costs of supervision, preliminaries etc.

7.5.2 The subcontractor must not claim any money in relation to any site condition in excess of its entitlement under this clause.

Hazardous Substances

7.6 If the subcontractor discovers a hazardous substance, the subcontractor must do each of the following:

- Immediately stop work at the location of the discovery.
- Immediately notify Wiley.
- Deal with that hazardous substance in accordance with Wiley's instructions.
- Hazardous substances are those substances and physical conditions that are subject to any environmental legislation in the jurisdiction in which the subcontract works are performed.

7.6.1 The subcontractor must deal with that substance under the preceding clause and must still strictly comply with the subcontract. It must also verify to Wiley that it has disposed of any hazardous substance in accordance with the law.

- 7.6.2 The subcontractor is entitled to payment, damages or compensation for dealing with hazardous substances, after accounting for Wiley's entitlement to recover its costs of supervision, preliminaries etc. The subcontractor must not claim any money in relation to any hazardous substances in excess of its entitlement under this clause.

Adjoining or neighbouring buildings

- 7.7 The subcontractor must perform the subcontract works in a way that does not cause damage to any adjoining or neighbouring properties.
- 7.7.1 The subcontractor must pay Wiley the direct and consequential costs arising from the rectification of any damage the subcontractor causes to any neighbouring or adjoining buildings. The costs incurred by Wiley under this clause will be payable to Wiley by the subcontractor as a debt.

Use of site by subcontractor

- 7.8 Unless the subcontract otherwise provides or Wiley gives prior written approval, the subcontractor must not use the site or allow it to be used for any of the following:
- Camping.
 - Residential purposes.
 - Any purpose not connected with the subcontract works.

Finding of minerals, fossils and relics

- 7.9 Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the site will be and remain the property of Wiley, or any other person nominated by Wiley.
- 7.9.1 Immediately the subcontractor discovers any of these things, the subcontractor must take precautions to prevent their loss, removal or damage and must notify Wiley of the discovery.

Site to be clean and tidy

- 7.10 Having regard to the activities on and around the site, the subcontractor must keep the site clean and tidy at all times, to the satisfaction of Wiley.
- 7.10.1 The subcontractor must, daily, clean up and remove all its debris and rubbish and waste materials from the areas in which the subcontractor is performing the subcontract works.
- 7.10.2 If the subcontractor fails to comply with its obligations under this clause, Wiley may engage others to discharge the subcontractor's obligations. Any money paid by Wiley in relation to discharging the subcontractor's obligations under this clause will be payable by the subcontractor to Wiley as a debt.

Protection of trees and plants

- 7.11 The subcontractor must take care to protect all trees and other plants not required, under the head contract, to be removed from the site.

Environmental protection

- 7.12 The subcontractor must comply with all environmental legislative and project requirements that apply to the locality in which the subcontract works must be performed.

Noise control

- 7.13 The subcontractor must take all practicable precautions to minimise noise arising out of or resulting from any activity associated with the performance of the subcontract works. All construction equipment must be fitted with noise suppressors unless specifically designed for quiet operation.

Vehicles on site

- 7.14 The subcontractor is not permitted to have any vehicles on site unless required for a particular task and the performance of that task has been approved by Wiley.

Entry to site

- 7.15 Every person entering the site must comply with all local regulations and requirements relating to the issue of an entry permit and with all conditions relating to entry to the site.

Site control

- 7.16 Delivery of materials to the site, space for storage of materials and for building sheds, offices, workshops and other temporary structures will be allowed only in accordance with arrangements entered into between the subcontractor and Wiley and subject to any conditions determined by Wiley.
- 7.16.1 No new roads or tracks may be formed, no existing roads or tracks may be altered, no camps erected, no trees or shrubs removed, no sewerage or power lines cut, no fires lit or anything done that may affect the environment to a significant extent without the prior approval of Wiley.

Unloading and access

- 7.17 Access to the site is restricted to those avenues directed by Wiley. Only approved vehicles may enter the site to unload goods. The subcontractor must have a representative on site to receive materials otherwise they will not be received. The subcontractor must transport, unload, stack and distribute all materials and equipment required by it for this project.

Existing services

- 7.18 It is the responsibility of the subcontractor, within the subcontract sum, to ensure that it is fully acquainted with the extent and location of all existing services affected by and in the vicinity of the project works and work areas, and including, but not limited to the following:
- Telephone, intercom, communications and data cabling.
 - Electrical, fire alarm and control cabling.
 - Water supply, drainage, sewerage.
 - Gas lines.
 - Mechanical services.

- Fire services.
- 7.18.1 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to any alterations, making good or terminating existing services where affected by the new subcontract works.

Works accommodation and amenities

- 7.19 The subcontractor must supply, within the subcontract sum, all works accommodation and amenities for the subcontractor's employees and the subcontractor's sub-subcontractors, stated in schedule 3.

Storage and office facilities

- 7.20 The subcontractor must provide adequate weather-tight storage accommodation above ground level for all plant, equipment and materials required to perform the subcontract works which are liable to damage or deterioration by exposure. The subcontractor must provide its own office facilities, if required, and all subcontractors will be responsible to provide their own communications, telephones, power etc, unless stated otherwise in the subcontract particulars.

Signage

- 7.21 The subcontractor must not erect any signage on, or near, the site without the written approval of Wiley.

8 Site services

Temporary services by Wiley

- 8.1 Wiley must generally provide temporary service facilities whilst they are required by Wiley for the purpose of its own work or for the common use of all subcontractors. These services will be in place under the program currently applicable under clause 9.2. The subcontractor has no right to require Wiley to provide any temporary services or provide temporary services for a longer period than indicated by the program currently applicable under clause 9.2.
- 8.1.1 The temporary services that Wiley will provide and those that the subcontractor must provide are stated in schedule 3.
- 8.1.2 Those services will be provided to the subcontractor at Wiley's absolute discretion and may be withdrawn without notice.
- 8.1.3 The reasonable use of temporary services including the services of attendants and necessary operators will be available to the subcontractor subject to prior arrangement with Wiley.
- 8.1.4 The subcontractor acknowledges that it has allowed, in the subcontract sum, for the cost of all temporary services it requires for the performance of the subcontract works where the temporary services provided by Wiley are not available for the subcontractor's use.

Scaffolding

- 8.2 If Wiley allows the subcontractor to use any scaffolding provided by Wiley, all of the following apply:
- 8.2.1 Wiley gives no warranty regarding the suitability or fitness for purpose of that scaffolding for the performance of the subcontract works.
 - 8.2.2 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to having to provide its own scaffolding where the scaffolding provided by Wiley is unsuitable for the performance of any aspect of the subcontract works.

Additional services, including scaffold etc

- 8.3 Wiley is only liable to provide services required by this subcontract.
- 8.3.1 If, for any reason, Wiley provides services in excess of that stated in clause 8.3, the subcontractor must pay Wiley the partial cost of those additional services. The subcontractor's liability for that cost will be determined by Wiley by reference to the proportion the subcontractor, its employees and sub-subcontractors use the additional services compared to the use of those additional services by other subcontractors, their employees and sub-subcontractors.

9 Time, performance, delay and acceleration**Time for commencement of subcontract works**

- 9.1 The subcontractor must commence the subcontract works on the date stated in item 10 of schedule 1 or on any reasonable other date within 10 business days before or 20 business days after that date notified to the subcontractor by Wiley.
- 9.1.1 The subcontractor acknowledges and agrees that the date on which it can efficiently commence the subcontract works is likely to be different from the date stated in the program currently applicable under clause 9.2 at the date the subcontractor becomes bound by this subcontract.
 - 9.1.2 The subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to the date for commencement of the subcontract works at the time the subcontractor becomes bound by this subcontract being different from the date on which the subcontractor must commence the subcontract Works under clause 9.1.

Subcontractor must comply with the program

- 9.2 Wiley will prepare a program for the performance of all work required to practically complete the head contract works by the date or dates for practical completion under the head contract. This program will state the period, or periods, during which the subcontract works must be performed and completed along with the dates, periods and durations for the performance of all work under other subcontracts.
- 9.2.1 Wiley will periodically adjust the program to account for the actual progress of the work required to complete the head contract works or to maintain progress or mitigate the delay to critical activities in the previously issued program. No adjustment to the program will entitle the subcontractor to an extension of time under clause 9.6, although the subcontract may have other bases upon which to claim an extension of time under clause 9.6.

- 9.2.2 The currently applicable program will always be available for inspection in Wiley's site office during normal office hours.
- 9.2.3 The subcontractor must comply with the latest currently applicable program under this clause 9.2.
- 9.2.4 Wiley may instruct the subcontractor to produce a detailed program for the performance of the subcontract works, or any part of the subcontract works that complies with the program currently applicable under this clause 9.2. The subcontractor must comply with Wiley's instruction within the time instructed by Wiley. Nothing in any program will relieve the subcontractor from its obligations under clause 9.3.
- 9.2.5 In agreeing to comply with the relevant applicable program under this clause 9.2, the subcontractor acknowledges that, because of the interaction of numerous subcontractors, suppliers and consultants on the site and the delay and disruption any of those other subcontractors, suppliers or consultants may cause the subcontractor, the subcontractor has allowed in the subcontract sum for expected this delay and disruption. The subcontractor is not entitled, and must not claim, any extension of time or any payment, damages or compensation in addition to the contract sum for any delay or disruption caused by any other subcontractor, supplier or consultant.
- 9.2.6 The program currently applicable under this clause 9.2 is the program applicable at the relevant time of an event or circumstances to which any provision of this subcontract applies.

Time for performance and completion of the subcontract works

- 9.3 The subcontractor must diligently perform and complete the subcontract works within the subcontract period stated in item 11 of schedule 1, as adjusted under clause 9.1 or clause 9.6 and in accordance with the current program.
- 9.3.1 If Wiley notifies the subcontractor under clause 9.1 that the start date is earlier, or later, than the date stated in item 10 of schedule 1, the period stated in item 11 of schedule 1 will remain unchanged, but is subject to adjustments to the program made by Wiley under clause 9.2.
- 9.3.2 The subcontractor must also at all times take all reasonable steps to expedite the performance of the subcontract works so that, if reasonably possible, the subcontractor completes the subcontract works in a shorter period to that stated in item 11 of schedule 1.
- 9.3.3 The subcontractor must also commence and complete any particular activities in accordance with the currently applicable program under clause 9.2.
- 9.3.4 On the date of completion of the subcontract works, the subcontractor must give possession of the subcontract works to Wiley.

Site working days and times

- 9.4 The site will be open for work by the subcontractor as stated in item 12 of schedule 1. The subcontractor acknowledges and agrees that Wiley may instruct the subcontractor to resource its subcontract works with sufficient labour, materials, plant, tools and equipment, during the times the site is available to the subcontractor in either of the following circumstances:
- 9.4.1 At any time the subcontractor is not complying with its obligations under clause 9.3.

- 9.4.2 At any time the subcontractor is delaying another subcontractor from performing that other subcontractor's obligations under a provision similar to clause 9.3.

Subcontractor's failure to comply with the program

- 9.5 If the subcontractor is not complying with its obligations under clause 9.3, Wiley may instruct the subcontractor to apply more resources to the performance of the subcontract works so that it remedies that default within the time instructed by Wiley.
- 9.5.1 If the subcontractor fails to comply with an instruction given under clause 9.5, Wiley may do either or both of the following:
- Employ the resources reasonably required to comply with the instruction.
 - Instruct other subcontractors to accelerate.
- 9.5.2 The subcontractor will remain responsible for all work performed by others under clause 9.5.1.
- 9.5.3 The cost incurred by Wiley of employment of the resources employed by Wiley, including supervision costs incurred by Wiley or acceleration costs payable to other subcontractors, under clause 9.5.1 will be payable to Wiley by the subcontractor as a debt.

Extensions of time

- 9.6 The subcontract period stated in item 11 of schedule 1 may be extended, but only in accordance with this clause..
- 9.6.1 If it is reasonably apparent to the subcontractor that it is being, or will be, delayed in the performance of the subcontract works by any of the events mentioned in clause 9.6.2, it must, within the time stated in item 13 of schedule 1 after the commencement of the event that causes, or will cause, the delay, give Wiley written notice of the delay, or likely delay.
- 9.6.2 The events that may entitle the subcontractor to an extension of time are delays caused by Wiley and the events stated in item 14 of schedule 1.
- 9.6.3 Wiley must grant the subcontractor an extension of time for the completion of the subcontract works, but only if all of the following apply:
- The subcontractor has notified Wiley strictly in accordance with clause 9.6.1.
 - The subcontractor is actually delayed by any of the events mentioned in clause 9.6.2 or the delay is caused by a suspension mentioned in clause 9.8.1.
 - The event that causes the subcontractor delay will actually cause the head contract works delay by reference to the currently applicable program under clause 9.2.
- 9.6.4 The subcontractor acknowledges and agrees that delays caused by other subcontractors are not delays caused by Wiley.
- 9.6.5 Wiley may instruct the subcontractor as to the form and content of any notices the subcontractor may give under clause 9.6.1. The subcontractor must comply with that instruction.

Delay and disruption costs

- 9.7 The subcontractor is entitled to payment for delay and disruption, but only if both of the following apply:
- The subcontractor is granted an extension of time under clause 9.6.
 - Wiley caused the delay or the cause of the delay was an event stated in item 14 of schedule 1 or a suspension to which clause 9.8.1 applies.
- 9.7.1 The subcontractor's entitlement under this clause is limited to the costs the subcontractor can verify to Wiley it incurred that are solely attributable to the delay and the subcontractor could not reasonably avoid.
- 9.7.2 The subcontractor must not claim any money for any event that causes it delay or disruption in excess of its entitlement to payment under clause 9.7.

Suspension

- 9.8 Wiley may, at any time, give the subcontractor a written instruction to suspend any part of the subcontract works. The subcontractor must comply with that notice.
- 9.8.1 If Wiley's instruction to suspend the work does not arise out of a breach of the subcontract by the subcontractor, the subcontractor may claim an extension of time under clause 9.6.
- 9.8.2 If Wiley's instruction to suspend the work arises out of a breach of the subcontract by the subcontractor, the subcontractor is not entitled to any extension of time and must not claim any extension of time in relation to the suspension nor any payment or compensation additional to the subcontract sum for the suspension.

Acceleration – subcontractor to state costs

- 9.9 Even if the subcontractor is complying with its obligations stated in clause 9.3, Wiley may request an acceleration proposal from the subcontractor involving any or all of the following:
- Acceleration of the performance of any or all of the activities involved in the performance of the subcontract works.
 - Change to the sequence of activities involved in the performance of the subcontract works.
 - Change to the timing of activities involved in the performance of the subcontract works.
- 9.9.1 The subcontractor may notify Wiley in writing of any reasonable objection it has to acceleration of the subcontract works. If it does, Wiley may withdraw the request made under clause 9.9.
- 9.9.2 If the subcontractor does not notify Wiley under clause 9.9.1, the subcontractor must promptly notify Wiley in writing of the additional direct costs it will incur in complying with the instruction.

Wiley may instruct subcontractor to accelerate

- 9.10 Wiley may, after receiving the subcontractor's notice under clause 9.9.2, give the subcontractor an instruction in writing including each of the following:
- 9.10.1 An instruction to the subcontractor to accelerate the subcontract works in accordance with the subcontractor's proposal given under clause 9.9.2 or in accordance with any changes to the proposal agreed between Wiley and the subcontractor.
 - 9.10.2 That Wiley accepts the amount of additional costs notified by the subcontractor under clause 9.9.2 or any amendments to those costs agreed between Wiley and the subcontractor.
 - 9.10.3 The details of the required acceleration of the subcontract works consistent with the subcontractor's proposal given under clause 9.9.2 or any amended details agreed between Wiley and the subcontractor.

Limitations on acceleration costs

- 9.11 The subcontractor's entitlement to be paid the costs of any acceleration of the subcontract works is subject to each of the following:
- 9.11.1 A condition that the subcontractor accelerates as agreed or as instructed by Wiley.
 - 9.11.2 The amount of acceleration costs payable to the subcontractor (if any) is limited to the additional direct costs notified by the subcontractor under clause 9.9.2.
 - 9.11.3 Subject to the limitation stated in clause 9.11.2, the subcontractor is entitled to only the acceleration costs actually expended by the subcontractor that the subcontractor can verify to Wiley's satisfaction.

Subcontractor's liability for delay and disruption

- 9.12 The subcontractor must pay Wiley the cost, expense and damages, determined by Wiley in accordance with clause 9.12.2, that Wiley incurs as a result of any of the following circumstances:
- The subcontractor, by reference to the currently applicable program under clause 9.2, causes delay or disruption to Wiley or other subcontractors and, as a consequence, Wiley incurs a liability to pay other subcontractors delay and disruption costs under a clause identical to clause 9.7.
 - The subcontractor caused delay causes Wiley to extend the program under clause 9.2.
 - The subcontractor causes Wiley to incur loss, damage or liability because of the delay.
 - The subcontractor suspends the performance of the subcontract works without Wiley's approval or without a statutory right to suspend the subcontract works.
- 9.12.1 The subcontractor's liability under clause 9.12 may include, proportionately with the liability of other subcontractors for delay and disruption, the subcontractor's liability for costs, expense of damages, other than liquidated or agreed damages, incurred by Wiley as a consequence of any of the circumstances stated in clause 9.12.
- 9.12.2 Wiley must determine the subcontractor's liability under this clause 9.12 taking into account the degree to which the subcontractor actually contributed to any of the following:

- The delay and disruption experienced by Wiley or any other subcontractor.
- The head contract works being completed after that date for completion stated in the then currently applicable program under clause 9.2.
- Wiley's liability to pay costs and damages because of the delay.

General discretion for Wiley to extend time

9.13 Wiley may, at any time, extend time for completion of the subcontract works or a separable portion of the subcontract works, even if the subcontractor is not entitled to an extension of time under this subcontract.

9.13.1 This discretion is for the benefit of Wiley. The subcontractor is not entitled to the benefit of this discretion.

9.13.2 An extension made under this clause 9.13 of the currently applicable program under clause 9.2 will not entitle the subcontractor to delay or disruption costs.

10 Subcontract sum, deductions and claims for adjustments

Subcontract sum

10.1 The subcontract sum is stated in the item 2 of schedule 1. The subcontract sum may be adjusted, but only as follows:

10.1.1 In accordance with this part 10.

10.1.2 In accordance with part 9.

10.1.3 If, and only if, a special condition stated in schedule 5 states that the subcontract works, or any part, is subject to a re-measure, the subcontract sum will be adjusted by reference to the schedule of rates or bills of quantity and the actual quantities performed by the subcontractor.

Deductions for subcontractor's default

10.2 Subject to clause 10.2.1, money stated to be payable to Wiley by the subcontractor under any provision of this subcontract for costs incurred by Wiley will be subject to an additional administration charge of 10% of the amount incurred by Wiley.

10.2.1 The administrative charge mentioned in clause 10.2 does not apply to the following:

- Costs and damages under clause 9.12 (damages for failure to complete by the date for completion).
- Costs and damages associated with a substitution of unconditional undertakings for retention under clause 12.1.5.

10.2.2 In relation to any obligation of the subcontractor under any provision of this subcontract that does not expressly state that the subcontractor must pay Wiley, the following apply:

- Wiley may give the subcontractor a reasonable opportunity to remedy the breach of its obligations under, or related to, this subcontract.

- If the subcontractor fails to do so, Wiley may incur the cost of discharging that obligation of the subcontractor.
 - Any costs incurred by Wiley, and an additional administration charge of 10% of the amount incurred by Wiley, will be payable to Wiley by the subcontractor as a debt.
- 10.2.3 Any money payable to Wiley by the subcontractor under this subcontract will be recoverable by Wiley as a debt and may be deducted by Wiley from any money due, or to become due, to the subcontractor under this subcontract after Wiley gives the subcontractor notice of the reasons for the deduction and the amount of the deduction.
- 10.2.4 Wiley's project manager, or his or her delegate, will certify amounts payable under this clause, if any, as part of progress certificates issued to the subcontractor under clause 11.8.

Claims for variations to the subcontract works

- 10.3 The subcontractor may claim payment for variations, but only strictly if all of the following apply:
- 10.3.1 Any of the following applies:
- The subcontractor is entitled to make a claim for unanticipated conditions as stated in clause 7.5.
 - For any variation caused by an instruction not stated by Wiley to be a variation, the subcontractor has strictly complied with clause 4.3.5.
- 10.3.2 The variation to the subcontract works causes the subcontractor to perform more or less work, or to incur more or less cost, than required by the subcontract at the time this subcontract was formed as stated in clause 16.13.
- 10.3.3 The subcontractor does its best to reduce any additional work or any additional costs, and to maximise any reduction in any work or cost, caused by the change in the subcontract works.
- 10.3.4 In respect of each variation claim, the subcontractor must, with the variation claim, give Wiley a statement that separately details each of the following:
- The additional labour attributable to the additional work.
 - The labour made unnecessary by the instruction.
 - The additional materials attributable to the additional work.
 - The materials made unnecessary by the instruction.
 - The on-site and off-site overheads attributable to the additional work.
 - The on-site and off-site overheads made unnecessary by the instruction.
 - The subcontractor's margin on the nett additional work.
 - Alternatively to all the above bullet points, the rates and prices applicable to the additional work, if any.

Valuation of variations and provisional work

- 10.4 Wiley must value variations, including variations that cause the subcontractor to perform less work or incur less cost, and provisional work in accordance with the following rules in descending order:
- If Wiley and the subcontractor have agreed the value, that value will be used.
 - If, and to the extent that, work involved in the variation or provisional work is work described in any bills of quantity or schedules of rates that apply under schedule 4 to this subcontract, the rates and prices in those bills or schedules will be used.
 - If, and to the extent that, work involved in the variation or provisional work is similar, or analogous, to work described in any bills of quantity or schedules of rates that apply under schedule 4 to this subcontract, the relevant rates and prices will be used as a basis for valuing that work. In this case, an adjustment must be made for the differences between the work mentioned in the bills or schedules and the work involved in the variation.
 - If, and to the extent that, work involved in the variation or provisional work is not similar, or not analogous, to work described in any bills of quantity or schedules of rates that apply under schedule 4 to this subcontract, then the work will be valued at prevailing industry market rates.
 - If, and to the extent that, work involved in the variation or provisional work cannot be valued in accordance with the preceding rules, it may be valued as day work, if an instruction to record the work as day work has been given under clause 4.4.
 - If, and to the extent that, work involved in the variation or provisional work cannot be valued in accordance with the preceding rules, it will be valued on a fair and reasonable basis.
- 10.4.1 Wiley's project manager for the project, or his delegate, will certify amounts payable under this clause, if any, as part of progress certificates issued to the subcontractor under clause 11.8.

Limitation on subcontractor's right to recovery for variations

- 10.5 The subcontractor's rights to recovery of additional payment for variations, whether under this subcontract, at common law, in equity or under any statute (to the extent that entitlement can be lawfully limited) is strictly subject to the following rules:
- 10.5.1 For variations instructed by Wiley under clause 4.3, the amount to which the subcontractor is entitled is the amount agreed in accordance with clause 4.3.2 or if not in agreement, the amount determined by Wiley in accordance with clause 10.4.
- 10.5.2 For any variations the subcontractor claims is a variation, but has not been instructed as a variation, the subcontractor must have notified Wiley in strict accordance with clause 4.3.5, to be entitled to any payment, damages or compensation for any additional work the subcontractor considers it was required to perform.

Claims for costs of tests instructed by Wiley

- 10.6 The subcontractor may claim the costs of tests and the reinstatement of work mentioned in clause 4.25.2.
- 10.6.1 The subcontractor's claim must detail all costs the subcontractor considers it has incurred that are attributable to the test and the reinstatement.

- 10.6.2 The subcontractor's claim must be made within 21 calendar days following the date on which the result of the test is known by the subcontractor.
- 10.6.3 If the subcontractor does not make a claim strictly in accordance with clause 10.6.2 the subcontractor is not entitled to, and must not claim, any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to the test.

Claims under the head contract

- 10.7 If the subcontractor considers that it is entitled to make a claim, that is not disallowed by this subcontract, and is allowed under the head contract, it must give Wiley written notice of that claim within the time stated in item 15 of schedule 1 following the day on which the circumstances have arisen that give rise to the claim.
- 10.7.1 The claim must state each of the following:
- The legal basis for the claim including reference to head contract and head contract provisions the subcontractor says are applicable.
 - The amount of money claimed.
- 10.7.2 Wiley may instruct the subcontractor as to the form and content of any notices the subcontractor may give under clause 10.7.1. The subcontractor must comply with that instruction.
- 10.7.3 Wiley will, in its absolute discretion, decide whether or not to pursue any claim notified by the subcontractor under clause 10.7.
- 10.7.4 If Wiley pursues a claim notified by the subcontractor under clause 10.7, each of the following applies:
- The subcontractor must give Wiley all necessary assistance in pursuing that claim.
 - If money is recovered under the claim, the subcontractor must indemnify Wiley for the proportion of the legal, consultancy and Wiley management costs incurred by Wiley that the subcontractor's entitlement bears to the total amount recovered under the claim.
 - If no money is recovered under the claim, the subcontractor must pay Wiley half ($\frac{1}{2}$) the legal, consultancy and Wiley management costs incurred by Wiley in pursuing the claim.
- 10.7.5 Wiley may instruct the subcontractor to give Wiley all reasonable assistance in relation to any claim or submission that Wiley makes under the head contract. The subcontractor must comply with the instruction but the subcontractor is not entitled to and must not claim any payment, damages or compensation additional to the subcontract sum nor claim an extension of time in relation to any assistance the subcontractor must give under this clause.

Rise and fall

- 10.8 The subcontract sum is not subject to adjustment for rise and fall provisions due to fluctuations in rates of labour and material and will remain firm for the duration of the subcontract works.

Bills of quantity and schedules of rates

- 10.9 Any bills of quantity or schedules of rates applicable under this subcontract will be used only to value variations, to the extent stated in clause 10.4.
- 10.9.1 Bills of quantity or schedules of rates will only be used to remeasure work as provided in clause 10.1.3 and as stated in schedule 4.
- 10.9.2 In all other cases to that stated in clause 10.9.1, Wiley does not guarantee or warrant the accuracy of any bills of quantities or schedules of rates, nor that they are measured in accordance with the Australian Standard Method of Measurement. The subcontractor must verify for itself, in these circumstances, the accuracy of any description, quantities or whether all the subcontract works are included in the bill of quantities or schedule of rates.

GST glossary

- 10.10 In the remaining clauses of this part, the following terms and expressions have the meanings stated:
- 10.10.1 "GST exclusive amount" means, in respect of any amount payable, or consideration due, for any supply, made under or related to this subcontract, by a party under this subcontract (supplier) to the other party (recipient) the amount payable or consideration due (reduced, if at all, under clause 10.12) without provision for any GST payable on the supply.
- 10.10.2 The following have the meanings given to them under A New Tax System (Goods and Services Tax) Act 1999 (Cth):
- Adjustment event.
 - Adjustment note.
 - Consideration.
 - Creditable purpose.
 - GST.
 - Input tax credit.
 - Recipient.
 - Recipient Created Tax Invoice (**RCTI**).
 - Registered.
 - Supplier.
 - Supply.
 - Taxable supply.
 - Tax invoice.
- 10.10.3 ABN has the meaning given to it under A New Tax System (Australian Business Number) Act 1999 (Cth).

Goods and services tax (GST) - subcontractor warranties

- 10.11 The subcontractor warrants to Wiley each of the following:
- 10.11.1 The subcontractor has calculated the subcontract sum by fully accounting for all GST related tax changes. GST related tax changes include any reduction in, or abolition of any

impost by an Australian government related to, or in connection with A New Tax System (Goods and Services Tax) Act 1999 (Cth). These imposts include, but are not limited to tax, excise, fees, imposts, stamp duty, sales tax, financial institutions duty, debits tax etc.

- 10.11.2 It is registered for GST under Parts 2-5 of A New Tax System (Goods and Services Tax) Act 1999 (Cth) and will remain registered until after expiration of the defects correction period under clause 4.11.
- 10.11.3 It has accurately disclosed to Wiley its ABN and will not, without the written consent of Wiley, change its ABN before the date for the final payment under this subcontract.

Adjustment of the subcontract sum for GST related tax changes

- 10.12 Despite the subcontractor's warranties given under clause 10.11.1 and clause 10.11.2, if Wiley considers that the subcontract sum or any other charge for a supply made by the subcontractor under, or related to this subcontract, does not pass on to Wiley the full benefits of any GST related tax change, Wiley may give the subcontractor an instruction that the subcontract sum or other charge is adjusted by a sum stated in the instruction.
- 10.12.1 If the subcontractor disputes the instruction, it must do so strictly in accordance with part 15.

Wiley's GST warranties

- 10.13 Wiley warrants to the subcontractor that it is registered for GST and that it will promptly notify the subcontractor if it ceases to be registered.

Accounting for GST payable

- 10.14 The GST exclusive amount for any supply made under, or related to, this subcontract, must be increased by the amount of GST payable by the supplier on that supply so that the supplier retains, after deducting GST, the GST exclusive amount.

Tax invoices

- 10.15 Whether the subcontractor must give Wiley tax invoices or whether Wiley must give the subcontractor recipient created tax invoices (RCTIs) is stated in item 16 of schedule 1.
- 10.15.1 If the subcontractor must give Wiley tax invoices, the following apply:
- The subcontractor's progress payment claims and final payment claim must comply with the requirements of A New Tax System (Goods and Services Tax) Act 1999 (Cth) for tax invoices.
 - If the subcontractor does not comply with clause 10.15, the subcontractor is not entitled to any payment under any progress payment claim or final payment claim until it does.
 - If an adjustment event happens, the subcontractor must give Wiley an adjustment note within 7 calendar days after the adjustment event.
- 10.15.2 If Wiley must give the subcontractor RCTIs, the following apply:
- The subcontractor agrees that Wiley may issue RCTIs.
 - The subcontractor must not issue tax invoices.

11 Progress claims and payment

Progress payment claims

- 11.1 By the day of each month specified in item 17 of schedule 1 (the reference date under the applicable security of payment legislation), the subcontractor must deliver to Wiley a progress payment claim. If that day is not a business day, the subcontractor must deliver its progress payment claim by the last business day before the day stated in item 17 of schedule 1. If a progress claim is delivered before the date specified by this clause, it does not take effect as a progress claim until the day specified in item 17 of schedule 1. Only one progress claim may be delivered each month. The progress payment claim must be in the form set out in Schedule 9 or in such other form prescribed by Wiley and must state each of the following:
- 11.1.1 The value of the subcontract works, exclusive of the value of any provisional work completed, to that date under the subcontract.
 - 11.1.2 The value of any provisional work completed to that date valued under clause 10.4.
 - 11.1.3 Any acceleration costs payable to the subcontractor under clause 9.9 that have been expended by the subcontractor.
 - 11.1.4 The total value of off-site or unfixed materials and goods for which the subcontractor has incurred a liability, subject to the conditions stated in clause 11.6.
 - 11.1.5 The total of all other adjustments to the subcontract sum made by Wiley under part 9 or part 10.
 - 11.1.6 Any amount payable to the subcontractor that has been recovered by Wiley in respect of a claim notified by the subcontractor under clause 10.7.
 - 11.1.7 The total amount of all progress payments Wiley has previously paid to the subcontractor.

Validity of progress claim

- 11.2 A progress claim mentioned in clause 11.1 will be valid only if all of the following apply:
- 11.2.1 It strictly complies with clause 11.1.
 - 11.2.2 It is delivered to Wiley by the day of the month stated in item 17 of schedule 1.
 - 11.2.3 It is delivered in accordance with clause 11.5.
 - 11.2.4 It is accompanied by a statutory declaration in the form attached to the form of progress payment claim stated in schedule 9, made by a person in a position to know the relevant facts, that all the subcontractor's liabilities in relation to the subcontract Works that are due and payable have been paid.
 - 11.2.5 The subcontractor has given Wiley certificates of currency for the insurance policies required under clause 13.2.
 - 11.2.6 The subcontractor has complied with any reasonable request made by Wiley under clause 11.4.
 - 11.2.7 Wiley has received the subcontractor's executed contract document.

Late progress claims

- 11.3 If the progress payment claim or final payment claim is late, the subcontractor will not be entitled to a certification in relation to that claim until the subcontractor delivers a progress claim that strictly complies with clauses 11.1 and 11.2 in a subsequent calendar month.
- 11.3.1 Alternatively, Wiley's project manager, or his or her delegate, may elect to value and certify payment without the subcontractor's progress.
- 11.3.2 If Wiley's project manager, or his delegate, does certify a progress payment to the subcontractor in the absence of a progress claim made strictly in accordance with clauses 11.1 and 11.2 that will not relieve the subcontractor from its obligations to deliver progress claims strictly in accordance with clauses 11.1 and 11.2 for each subsequent date for making progress claims under this subcontract.

Subcontractor must verify progress claims

- 11.4 Wiley may request any reasonable verification of any part of the progress payment claim and the subcontractor must comply with that request.

Progress claims must be delivered to specified email address

- 11.5 A progress payment claim or final payment claim is valid only if it complies with clauses 11.1 and 11.2 and it is delivered by email to accounts@wiley.com.au.

Value of unfixed materials

- 11.6 Subject to clause 11.15 the subcontractor is entitled to be paid for unfixed plant and materials as stated in item 18 of schedule 1, in respect of which all of the following apply:
- 11.6.1 The materials or goods are intended to be incorporated into the subcontract works.
- 11.6.2 No further manufacturing or fabrication work remains to be done to the goods or materials before incorporation into the subcontract works.
- 11.6.3 The goods and materials are stored and identified separately from all other goods and materials at the premises at which they are stored.
- 11.6.4 The subcontractor has insured the goods and materials to the satisfaction of Wiley and has given Wiley evidence of that insurance.
- 11.6.5 The subcontractor has given Wiley an unconditional undertaking to pay from an issuer of securities approved by the Australian Prudential Regulation Authority for the sum claimed by the subcontractor for unfixed plant and materials.
- 11.6.6 Subject to clause 11.15.1, title in the goods and materials will pass immediately to Wiley on payment for those goods and materials and the subcontractor warrants that it has notified the relevant supplier of the vesting of title in Wiley.

Reference dates

- 11.7 Subject to clause 11.7.1, the reference dates under the applicable security of payment legislation is the day for making progress payment claims in accordance with clause 11.1 and 11.2.
- 11.7.1 If the subcontractor does not give Wiley a progress claim strictly in accordance with clauses 11.1 and 11.2 for any month, there will be no reference date that month. The next reference date will be the day determined in accordance with clause 11.1 of a

subsequent month in which the subcontractor does give Wiley a progress claim strictly in accordance with clauses 11.1 and 11.2.

- 11.7.2 The purpose of this provision is to ensure that Wiley has sufficient cash-flow under the head contract to pay all subcontractor claims each month. If a subcontractor makes a payment claim after the day for making progress payment claims in accordance with clause 11.1 and 11.2, that claim may not be included in Wiley's monthly claim under the head contract. That will mean that Wiley will not have money from the Principal to pay the subcontractor's late claim until Wiley has an opportunity to claim that money under the head contract in the next progress payment date under the head contract.

Certification of progress payments

- 11.8 Wiley's project manager, or his delegate, must certify in writing to the subcontractor the amount payable in respect of each progress payment claim. That certificate must be given within the number of business days stated in item 19.1 of schedule 1 after the day for making progress payment claims in accordance with clause 11.1 and 11.2.

- 11.8.1 The certificate must state the amount certified by Wiley's project manager as the amount payable to the subcontractor and the reasons why the amount certified for payment is less than the amount claimed in the subcontractor's progress payment claim, including accounting for the following:

- The value of each progress payment claim by reference to the cost to complete the subcontract works at the time the progress payment claim is made.
- Any work for which payment is claimed that has not been performed, or not been properly performed or for which the subcontractor is not otherwise entitled to payment.
- Any set off against any money payable to the subcontractor under this subcontract as debts owed by the subcontractor to Wiley under any other contract.

- 11.8.2 Money is only payable under this subcontract when Wiley's project manager, or his delegate, has certified that money as payable, under this clause. This condition is also subject to clause 14.8 (payment after termination for the subcontractor's default).

Retention money

- 11.9 If the subcontractor has not elected to provide security as stated in item 20 of schedule 1, Wiley may deduct 10% from each payment valued under clause 11.8 until Wiley holds 5% of the subcontract sum stated in item 2 of schedule 1 as adjusted under this subcontract.

Time for payment of progress payments

- 11.10 Wiley must pay the subcontractor the amount certified for payment by Wiley's project manager, or his or her delegate, within the number of business days stated in item 19.2 of schedule 1 after each reference date.

Correction of progress payment certificates

- 11.11 At any time, and from time to time, Wiley may, by a further certificate, correct any error that has been discovered by Wiley's project manager in any previous progress payment. This clause does not apply to the final payment certificate given to the subcontractor under clause 11.13.

All progress payments on account

- 11.12 All progress payments are made on account. They do not constitute any admission that the work, for which payment is made, has been valued in accordance with the subcontract or has been performed in accordance with the subcontract.

Final payment claim

- 11.13 After the subcontract works are complete in accordance with clause 4.29, Wiley will instruct the subcontractor to submit its final payment claim.
- 11.13.1 Within 14 calendar days after Wiley gives the subcontractor an instruction under clause 11.13, the subcontractor must give Wiley a final payment claim and endorse it "final payment claim".
- 11.13.2 The subcontractor must include in the final payment claim all money that the subcontractor considers payable by Wiley under or arising out of the subcontract or for any alleged breach of the subcontract or in tort or under any statute or in equity.

Wiley's project manager will certify final payment

- 11.14 Wiley will assess the subcontractor's final payment claim submitted under clause 11.13.1 as soon as practicable.
- 11.14.1 Wiley will give the subcontractor the following:
- A payment certificate stating the details of the assessment under clause 11.14.
 - An unsigned Deed of Release, in the form contained in schedule 6, that states the amount payable as the final payment sum.
- 11.14.2 The subcontractor must promptly sign and return the Deed of Release given to it under clause 11.14.1 as confirmation of the subcontractor's agreement to the final payment sum stated in the Deed of Release given to it under clause 11.14.1.
- 11.14.3 The subcontractor will not be entitled to any final payment until it signs and returns to Wiley the Deed of Release given to it under clause 11.14.1. The original of the Deed of Release, signed by the subcontractor must be delivered by email to Wiley at accounts@wiley.com.au.

Transfer of title in subcontract works

- 11.15 At the time that the subcontractor delivers any goods or materials intended to be incorporated into the subcontract works to site, title in all those goods or materials passes to Wiley.
- 11.15.1 The subcontractor warrants to Wiley that it has a legal entitlement to transfer title as stated in clause 11.15, despite any registration of a security interest in any of the goods, materials, plant and equipment by a supplier to the subcontractor.

12 Security for performance**Retention or security**

- 12.1 Depending on the election made by the subcontractor stated at item 20 of schedule 1, the subcontractor must give Wiley security for the performance of its obligations under this subcontract, in one of the following forms at the following times:

- Retention money retained by Wiley as stated in clause 11.9.
 - Before the subcontractor starts work on site under this subcontract, 2 unconditional undertakings to pay by an approved security provider approved by the Australian Prudential Regulation Authority, each in an amount stated in item 20 of schedule 1.
- 12.1.1 If the subcontractor has elected to provide security for its performance by way of unconditional undertakings to pay from an approved security provider and they have not been delivered at the time the subcontractor starts work on site under this subcontract, Wiley may, until the subcontractor delivers the unconditional undertakings to pay it elected to provide under clause 12.1, deduct and retain retention money at the rate of 10% of any payment made to the subcontractor until Wiley retains 5% of the subcontract sum. On delivery of the unconditional undertakings to pay it elected to provide under clause 12.1, Wiley must promptly pay the subcontractor any retention money it then holds.
- 12.1.2 The purpose of the security or retention is to secure to Wiley the performance of the subcontractor's obligations under the subcontract.
- 12.1.3 Wiley may have recourse to the unconditional undertakings, or retention, to pay or retain money for any money payable to Wiley by the subcontractor that the subcontractor fails to pay in accordance with this subcontract.
- 12.1.4 Wiley may use retention money, and if necessary withdraw cash from any bank account in which retention money is held, to satisfy any debt the subcontractor owes Wiley under this subcontract, to discharge any liability of the subcontractor to Wiley that the subcontractor has failed to discharge or where the retention money has not been claimed by the subcontractor for a period of 11 calendar months after the expiration of the defects rectification period under this subcontract.
- 12.1.5 If the subcontractor has initially elected to have retention money deducted as stated in item 20 of schedule 1, or that election is made as stated in clause 12.1.1, and the subcontractor subsequently seeks to substitute an unconditional undertaking to pay in place of retention money, the subcontractor must pay Wiley a sum equivalent to 5% of the total amount of retention to be held under the subcontract for Wiley's administration and financing costs associated with the substitution.
- 12.1.6 Wiley owns the interest accrued in relation retention money held by Wiley under this subcontract.

Return of security after completion of subcontract works

- 12.2 If the subcontractor has complied with its obligations including strictly complying with clauses 4.16 and 4.29, Wiley will return part of the security or retention to the subcontractor as stated in clause 12.2.1 by the latest of the following to happen:
- The subcontractor has returned to Wiley a valid signed Deed of Release in the form set out in schedule 6.
 - A period of 15 business days after the time stated in item 21 of schedule 1 has elapsed after the subcontract works are complete in accordance with clause 4.29.
- 12.2.1 The security or retention that Wiley must return under clause 12.2 is the following:

- If Wiley holds unconditional undertakings to pay, one of the unconditional undertakings to pay, or the balance of the proceeds of that undertaking if Wiley has made demand under that undertaking.
- If Wiley holds retention money, an amount, if any, that leaves Wiley holding 2.5% of the adjusted subcontract sum after the return of security or retention after completion of the subcontract works in accordance with clause 4.29.

Return of balance of security

12.3 If the subcontractor has complied with its obligations, Wiley will return the balance of the security or retention to the subcontractor within 10 business days after all of the following have happened:

- The subcontractor has made a written request to Wiley to return the security or retention.
- The subcontractor has returned to Wiley a valid signed Deed of Release in the form set out in schedule 6.
- A period of 15 business days after the expiration of the defects rectification period under this subcontract has elapsed.

12.3.1 Wiley will return the balance of the security or retention to the subcontractor as follows:

- If Wiley holds an unconditional undertaking to pay, that unconditional undertaking to pay, or the balance of the proceeds of that undertaking if Wiley has made demand under that undertaking.
- If Wiley holds retention money, the balance of that retention to which Wiley is not entitled to have recourse.

13 Indemnities and insurance

Indemnity by subcontractor

13.1 Subject to clause 13.1.1, the subcontractor agrees, at its own expense, to protect and fully indemnify Wiley against all loss, damages, claims, liens, actions, liabilities or proceedings in any way arising under any statute or common law incurred by Wiley including in relation to any of the following:

- Personal injury or death of any person caused by the subcontractor.
- Damage to any property, real or personal, caused by the subcontractor.
- Any injury or death of any person involved in the performance of the subcontract works.
- Damage to the subcontract works.
- Damage to the subcontractor's plant, equipment and vehicles.
- If item 8.1 of schedule 1 states that the subcontractor must perform design work, damage or liability caused by defective or negligent design.

13.1.1 The subcontractor's liability under the indemnity stated in clause 13.1 is reduced commensurate with the extent to which the following contributed to the damage, injury or death:

- Negligent acts of omission of Wiley, its employees or agents.
- War, invasion, acts of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority.
- Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the subcontractor or its employees or agents.

Insurance by the subcontractor

- 13.2 The subcontractor must take out, and maintain through any period that the subcontractor may incur liability under the indemnities mentioned in clause 13.1, the insurance policies stated in item 22 of schedule 1, for the minimum amounts also stated in item 22 of schedule 1.
- 13.2.1 The policies of insurance stated in item 22 of schedule 1 must name, as insureds, the parties stated in item 22 of schedule 1.
- 13.2.2 Each policy of insurance must contain the following provisions:
- Any person named as an insured may make a claim under the policy.
 - The conduct of any insured does not adversely affect the rights of other insureds.
 - The insurer does not assert any right of subrogation to the rights of any insured against any of the other insureds.
- 13.2.3 Any policy in relation to property must indemnify the insureds against the cost of reinstatement or replacement with new property.
- 13.2.4 The subcontractor must give to Wiley certificates of currency for all policies of insurance required by this subcontract at any time Wiley requests it to do so.

Workers' compensation requirements for sub-subcontractors

- 13.3 In addition to the requirements under clause 13.2, the subcontractor must ensure that all its sub-subcontractors comply with both of the following in relation to the sub-subcontractor's directors, supervisors, officers and workers:
- Each person involved in the subcontract works who can be covered by any statutory requirements applicable at the site is covered under that statutory scheme to the maximum extent possible.
 - Any person who cannot be covered by statutorily required insurance cover is covered by income protection insurance to the minimum extent mentioned in item 22 of schedule 1.
- 13.3.1 The subcontractor must continually indemnify Wiley against any liability arising out of the subcontractor's failure to comply with this clause.

Subcontractor's failure to give certificates of currency

- 13.4 If the subcontractor fails to comply with clause 13.2.4, Wiley may, on behalf of the subcontractor, take out any insurance policy for which the subcontractor has not given Wiley a certificate of currency as required by clause 13.2.4.

- 13.4.1 The costs incurred by Wiley in acting under clause 13.4 will be payable to Wiley by the subcontractor as a debt.

14 Termination

Wiley may require subcontractor to remedy default

- 14.1 If the subcontractor is in breach of any of its obligations under the subcontract, Wiley may give the subcontractor a notice requiring the subcontractor to remedy the breach within 10 business days.
- 14.1.1 The notice must specify the breach and must state that it is given under this clause. The notice must also state that, if the breach is not remedied within 2 working days, Wiley may terminate the employment of the subcontractor under this subcontract.

Wiley may terminate subcontract if default not remedied

- 14.2 If the subcontractor does not remedy the breach notified under clause 14.1 within 10 business days after receiving the notice, Wiley may terminate this subcontract by giving the subcontractor written notice.
- 14.2.1 The notice must state that it is given under this clause.

Wiley may immediately terminate

- 14.3 Wiley may immediately terminate the employment of the subcontractor under this subcontract by giving the subcontractor written notice of any of the following matters:
- Something that reasonably indicates that there is a significant risk that the subcontractor is, or will become, unable to pay its debts as they fall due.
 - The subcontractor being, or stating that it is, unable to pay its debts as they fall due.
 - The subcontractor being liquidated or dissolved, or a step is being taken to liquidate or dissolve it.
 - A liquidator or provisional liquidator is appointed to the subcontractor, or a step is being taken (including the filing of proceedings and the passing of a resolution) to appoint a liquidator or provisional liquidator.
 - A meeting of the subcontractor's creditors being called or held.
 - The subcontractor enters into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or is being made subject to a Deed of company arrangement.
 - The subcontractor is proposing a re-organisation, moratorium or other administration involving all or any class of its creditors.
 - A notice under s601AB of the Corporations Law is given to the subcontractor.
 - The subcontractor being, or (because of a statement it makes) being reasonably assumed to be, subject to an event described in ss459C(2) or 585 of the Corporations Law.
 - The subcontractor takes a step to gain protection from creditors, or being granted protection from creditors, under any legislation, or an administrator being appointed to, or in respect of the contract.

- The subcontractor becoming insolvent under administration as defined in s9 of the Corporations Law, or action being taken that could result in that happening.
- The subcontractor having a controller under s9 of the Corporations Law being appointed in relation to the subcontractor's property, or action being taken that could result in that happening.
- Anything happening under any law or in any jurisdiction that is similar to, or has a similar effect to, any of the events listed above.
- A step being taken to have a receiver or receiver and manager appointed to the subcontractor or its assets.
- The subcontractor, ceasing, or indicating that it is about to cease, carrying on business.
- The subcontractor repudiates this subcontract.
- The subcontractor has, without receiving an instruction from Wiley to do so, suspended any part of the subcontract works for 3 or more consecutive working days.

14.3.1 The notice must state that it is given under this clause.

Wiley may exclude subcontractor from site

14.4 If Wiley terminates this subcontract prior to completion of the subcontract works under clause 14.2 or clause 14.3, Wiley may exclude the subcontractor from site.

14.4.1 Wiley may take possession of any documents, unused materials and equipment on the site and may use them in completing the subcontract works.

14.4.2 Wiley may direct the subcontractor to remove all its property from the site. The subcontractor must comply within 5 calendar days, failing which, Wiley may remove the property identified in Wiley's direction and dispose of it and keep the proceeds.

Assignment of subcontractor's rights

14.5 If Wiley terminates this subcontract, the subcontractor must assign to Wiley all its rights under any agreement for the performance of work, supply of materials or temporary works to which the subcontractor is a party in relation to the project that is the subject of this subcontract.

14.5.1 The subcontractor irrevocably appoints Wiley as its attorney to complete any assignment under this clause.

Wiley may contract with others to complete the subcontract works

14.6 If Wiley terminates this subcontract under either clause 14.2 or clause 14.3 Wiley may subcontract with others to complete the subcontract works.

Wiley may pay sub-subcontractors or suppliers

14.7 If Wiley terminates this subcontract under either clause 14.2 or clause 14.3, Wiley may directly pay any sub-subcontractor or supplier for any work performed in respect of this subcontract, materials or equipment in respect of which payment has not been made by the subcontractor.

Payment to subcontractor after termination for subcontractor's default

- 14.8 If Wiley terminates this subcontract under either clause 14.2 or clause 14.3, the subcontractor is not entitled to any further payment under this subcontract, or otherwise, (if the subcontractor has any entitlement at all) until 60 days following expiration of the defects rectification period under this subcontract.
- 14.8.1 The suspension of further payment includes the suspension of any payment otherwise due under a certificate issued under clause 11.8 but not yet paid. In this case, the unpaid certificate must be treated by Wiley and the subcontractor as if it had not been issued.
- 14.8.2 The amount payable to the subcontractor after this subcontract has been terminated under clause 14.2 or clause 14.3 and after the payment suspension period mentioned in clause 14.8 has expired (if any money is payable to the subcontractor), is the unpaid value of the subcontract works completed by the subcontractor to the date of termination, less each of the following:
- The additional costs of completing the scope of subcontract works (ie: the scope at the date of termination) as compared to the adjusted subcontract sum at the date of termination (including any adjustments not yet determined in respect of the work completed by the subcontractor to the date of termination).
 - Any costs or damages for delay incurred by Wiley as a result of the termination and the necessity to engage others to complete the subcontract works.
 - Any other money that is payable by the subcontractor to Wiley under this subcontract.
 - Wiley's reasonable administrative costs and legal costs (on an indemnity basis) incurred as a result of the termination and the engagement of others to complete the subcontract works.
- 14.8.3 If the sum calculated under clause 14.8.2 is a positive amount, that amount will be payable to the subcontractor by Wiley.
- 14.8.4 If the sum calculated under clause 14.8.2 is a negative amount, that sum will be payable to Wiley by the subcontractor as a debt.

Termination if head contract terminated

- 14.9 If the head contract is terminated, Wiley may immediately terminate this subcontract by giving the subcontractor written notice of that termination.
- 14.9.1 If this subcontract is terminated under this clause, the subcontractor must comply with instructions from Wiley in relation to completing and making safe aspects of the subcontract works and the subcontractor's de-mobilisation from the site.
- 14.9.2 If this subcontract is terminated under this clause, Wiley will pay the subcontractor the total of the following:
- The value of the subcontract work completed by the subcontractor.
 - The costs of materials for which the subcontractor has incurred a current liability or the break costs of terminating those agreements.

- The reasonable costs incurred by the subcontractor in making safe any work plus the reasonable costs incurred by the subcontractor in de-mobilising from the site.
- 14.9.3 The subcontractor is not entitled to any payment, damages or compensation in relation to loss of profits, loss of opportunity nor redundancy costs suffered by the subcontractor or its subcontractors, suppliers or consultants caused by the termination of the head contract and the consequential termination of this subcontract.
- 14.9.4 If directed by Wiley, enter into a deed of novation of this subcontract from Wiley to the principal under the head contract.

Frustration

- 14.10 If this agreement is frustrated, the subcontractor will be entitled to be paid for all work it has completed to the date of the frustration. The subcontractor will not, however, be entitled to any damages or compensation for any loss of profit, loss of opportunity or any other category of consequential loss suffered by it, its subcontractors, suppliers or consultants.

15 Claims and dispute resolution

Notice of claim other than progress claims and final payment claim

- 15.1 If the subcontractor considers that it is entitled to claim (other than the claims mentioned in clause 15.1.1) in relation to any matter arising out of or related to this agreement, it must notify Wiley's project manager in writing of its claim. The notice must specify adequate details of the claim, including the legal basis for the claim and the amount claimed, or if the amount is not ascertainable at that time, the subcontractor's best estimate of the likely amount of its claim.
- 15.1.1 This part does not apply to the following claims:
- A progress payment claim under clause 11.1.
 - The final payment claim under clause 11.13.
 - A potential claim under the head contract in accordance with clause 10.7
- 15.1.2 The notice required by clause 15.1 must be given within 30 calendar days following the day on which any of the following happens:
- The subcontractor receives written notice of a decision or instruction from Wiley that it says gives rise to its claim.
 - In the case of a claim said to arise in contract, the date on which the breach of contract occurred.
 - In the case of a claim said to arise in tort, the date on which the breach of duty occurred.
 - In the case of a claim said to arise under statute or in equity, the day on which the last event happened that gives rise to the cause of action constituting the claim.
- 15.1.3 If the subcontractor fails to give notice of any claim in strict accordance with this clause, it is not entitled to take any further action in respect of that claim or to recover any payment, damages or compensation in respect of the subject matter of the claim.

Wiley's project manager to respond to claims

- 15.2 Within 30 calendar days of receiving a notice of claim under clause 15.1, Wiley's project manager must notify the subcontractor in writing whether, and to what extent, Wiley accepts the subcontractor's claim.

First settlement meeting

- 15.3 If the subcontractor wishes to dispute Wiley's notice given under clause 15.2, the subcontractor must notify both Wiley's project manager and Wiley's commercial manager of the dispute. Wiley's project manager and a senior representative of the subcontractor must meet within 14 calendar days after the notice of the dispute under this clause or by any later time agreed by the parties. They must engage in good faith discussions with the bona fide objective of resolving the dispute by agreement or by agreeing on a process to resolve the dispute other than by litigation (e.g. mediation, arbitration, expert determination etc).

Second settlement meeting

- 15.4 If, under clause 15.3, the dispute has not been settled, and a process for resolution other than litigation has not been agreed, the subcontractor's commercial manager or general manager and Wiley's commercial manager must meet. That second meeting must be held within 14 calendar days after the conclusion of the meeting held under clause 15.3 or before any later time agreed by the parties. Any delegate to the second meeting must not be a person who participated in the first meeting.
- 15.4.1 The participants in the meeting must engage in good faith discussions with the bona fide objective of resolving the dispute by agreement or by agreeing on a process to resolve the dispute other than by litigation (e.g. mediation, arbitration, expert determination etc).

External dispute resolution

- 15.5 Within 14 calendar days after the conclusion of the meeting convened under the clause 15.4 (or any other period agreed by the parties) if the dispute is not resolved, or a process of dispute resolution has not been agreed under clause 15.3, either party may terminate the operation of the dispute resolution process under this part 15 by giving notice in writing to the other.

Bar to proceedings

- 15.6 Neither party may commence legal proceedings (except for urgent interlocutory relief) in relation to any dispute contemplated by this part unless the procedure stated in this part has been strictly followed.

Parties to continue with obligations

- 15.7 The subcontractor and Wiley must continue to perform their respective obligations even though a dispute has been referred under this part or is being determined in accordance with this part.

16 General legal matters

Entire agreement

- 16.1 This subcontract contains everything the parties have agreed. The subcontractor cannot rely, and acknowledges that it does not rely, on any earlier document or anything said or done by any person associated with Wiley before this subcontract was executed.

Subcontract benefits successors and assignees

- 16.2 This subcontract continues for the benefit of, and binds, a successor in title of a party, including the party to whom a party's rights and obligations are assigned in accordance with this subcontract.

Wiley and the subcontractor to observe confidentiality

- 16.3 Wiley and the subcontractor must keep absolutely confidential all matters relating to this subcontract. Neither Wiley nor the subcontractor must not disclose any information except to the following extent:

- The disclosure of that information is necessary for the discharge of obligations under the subcontract.
- The disclosure is required by law, in which case the disclosing party must notify the other party of its obligation to disclose before making the disclosure.
- The disclosure is required under the head contract.
- The disclosure is made to the party's legal advisers for the purposes of obtaining legal advice.

16.3.1 The subcontractor must keep absolutely confidential any claim or dispute under this subcontract.

16.3.2 The subcontractor must not advertise its relations with Wiley or its involvement in the Project works without the written permission of Wiley.

16.3.3 The subcontractor must ensure that its sub-subcontractors are bound by a clause similar to this clause.

16.3.4 The subcontractor must not communicate with anyone but Wiley about the Project without first getting the written approval of Wiley to do so. In particular, the subcontractor must not communicate with the Principal under the head contract or its consultants and representatives.

Severability

- 16.4 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this subcontract, but the rest of the subcontract is not affected. This does not apply if a clause or part of a clause goes to the heart of the transaction contemplated by the subcontract.

Waiver

- 16.5 The fact that Wiley fails to do, or delays in doing, something that Wiley is entitled to do under this agreement, does not amount to a waiver of any obligation or breach of obligation by Wiley. A waiver by Wiley is only effective if it is in writing.

16.5.1 A written waiver by Wiley is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

Subcontract not to be read against Wiley

- 16.6 This agreement is not to be construed against Wiley merely because Wiley was responsible for preparing the agreement.

Relationship of Wiley and the subcontractor

- 16.7 This agreement does not create a partnership, agency, fiduciary or other relationship, except the relationship of contracting parties, between the parties. No party is liable for an act or omission of another party, except to the extent set out in this agreement.

Governing law

- 16.8 This subcontract is governed by the laws applicable in the jurisdiction stated in item 23 of schedule 1.

Notices

- 16.9 A notice will be deemed to have been given when it is received by the person to whom it is addressed or when it is delivered to that person's address as stated in the subcontract, whichever is the earlier.

Assignment

- 16.10 Subject to other express provisions of this subcontract dealing with assignment in particular circumstances, neither party may, without the prior written approval of the other on such reasonable terms and conditions as are determined in writing by the other, assigns its rights and liabilities under this subcontract.

Authority to execute

- 16.11 Each of the persons executing this agreement warrant their respective authorities to bind the party on whose behalf they are executing the agreement.

Subcontractor as trustee

- 16.12 If the subcontractor is a trustee, it warrants to Wiley the following:
- 16.12.1 The subcontractor is entitled to be indemnified out of the assets of the trust for any liability that the subcontractor incurs in relation to this subcontract.
 - 16.12.2 In the event that the subcontractor incurs liability to Wiley under this subcontract, the subcontractor will promptly exercise its rights of indemnity against the assets of the trust to discharge that liability.

Time of formation of this subcontract

- 16.13 This subcontract will be formed on Wiley giving the subcontractor a written acceptance of the subcontractor's final offer or upon the execution of this subcontract by both parties, whichever occurs earlier.

Meaning of force majeure event

16.14 Force majeure event in clause 16.15 means any event or circumstance or combination of events and circumstances of events stated in clause 16.14.2 which is beyond the control of the party affected and which causes or results in default or delay in the performance by the affected party of any of its obligations under the subcontract and, in the case of the subcontractor where none of the following apply:

- An experienced subcontractor could not foresee or reasonably make provision for the event, circumstance, default or delay.
- The event, circumstance, default or delay was not caused or contributed to by any act or omission or breach of the subcontract by the subcontractor.

16.14.1 The event could not reasonably be prevented, overcome or remedied by the exercise of a standard of care and diligence consistent with that of a prudent and competent builder, including without limitation, the expenditure of all reasonable sums of money.

16.14.2 The events that may, subject to clause 16.14, that may constitute a force majeure event are any of the following:

- Fire, explosion, mudslide, natural disaster, lightning, flood, earthquake, hurricane, cyclone, tsunami or other act of God.
- Riots, civil commotion, sabotage, terrorism, act of a public enemy, war (declared or undeclared), revolution, blockade or embargo.
- Shipwreck, train or plane crashes.
- Radioactive contamination or toxic or dangerous chemical contamination.

Force majeure

16.15 If a force majeure event prevents a party from performing any obligation under the subcontract, each of the following apply:

16.15.1 The party affected must promptly give notice to the other party stating the following:

- The estimated time for which the force majeure event is likely to persist.
- Any reasonable action that, not involving the expenditure of additional costs, can be taken to mitigate or the effects of the force majeure event and the estimated costs of taking that action.

16.15.2 The party affected will be relieved of the obligations to perform that are prevented by the force majeure event for the period the force majeure event persists and shall not be liable to the other party for the failure to performance caused by the force majeure event.

16.15.3 If the subcontractor gives notice under clause 16.15.1 and the force majeure event can be overcome by the expenditure of additional costs, Wiley may instruct the subcontractor to state the costs that will be incurred by the subcontractor to overcome the force majeure event and the subcontractor must promptly comply with that instruction.

16.15.4 If the force majeure event persists for more than 6 months after the commencement of the force majeure event either party may terminate the subcontract by notice in writing to the other party and the subcontract will be treated as discharged by agreement.

Interpretation

16.16 In this subcontract, unless the contrary appears, the following rules apply:

- Each main clause (e.g. 1.1) states the main obligation. Sub-clauses under main clauses (e.g. 1.1.1, 1.1.1(a) etc or bullet pointed sub-clauses) state any, or all, of more detail, clarification or qualifications of the main obligation.
- A reference to this agreement or other document includes any variation or replacement of this agreement or those other documents.
- A reference to a clause is a reference to the whole unless the reference is to a specified sub-clause.
- A reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments, or replacements of any of them.
- The singular includes the plural and vice versa.
- The word “person” or “party” includes a body corporate, partnership, joint venture, unincorporated association, trust, authority and vice versa.
- A reference to a person includes a reference to the person’s executive, administrators, successors, substitutes including but not limited to persons taking by novation and assigns.
- If a period of time is specified and dates from a given date or day of an actual event, it is to be calculated exclusive of that day.
- A reference to a day is to be interpreted as a period of time commencing at midnight and ending 24 hours later.
- If an event must occur on a stipulated day, that is not a business day, then a stipulated day will be taken to be the next business day.
- A business day is each Monday to Friday (inclusive) excluding and statutory public holidays applicable at the site and excluding the days of the Christmas – New Year period excluded from the definition of '*business days*' in the security of payment legislation applicable at the site.
- A working day is each Monday to Saturday (inclusive) excepting, rostered days off and statutory public holidays applicable to the site.
- “Promptly” means as soon as is practicable in the relevant circumstances.
- 'Includes' or 'including' means includes or including, but not limited to the items or examples mentioned; i.e. everything like, or in the nature of the items or examples mentioned is included.