

SCHEDULE 11 – FORM OF SUBCONTRACTOR WARRANTY DEED

Parties

_____ ACN _____ (principal)

and

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

and

_____ ACN _____ (subcontractor)

Operative Provisions

Warranties

- 1 The subcontractor warrants to the principal and Wiley each of the following in respect of all work performed and all materials supplied by the subcontractor as part of the subcontract works:
 - 1.1 They comply in all respect with the requirements of the subcontract identified at item 1 of the schedule to this deed.
 - 1.2 To the extent that the quality of materials or standard of workmanship are not specified in the subcontract comply with the requirements of law and are of merchantable quality and be fit for the purposes for which they are required.

Replacement or making good subcontract works

- 2 Subject to clause 2.1 of this deed, the subcontractor must at its cost make good, to the reasonable satisfaction of the principal, any of the subcontract works which, within the Warranty Period if either of the following apply:
 - Any of the subcontract works are of a lower standard or quality than stated in clause 1 of this deed.
 - Any of the subcontract works has deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
 - 2.1 The liability of the subcontractor under this clause 3 is reduced to the extent that deterioration is caused by any of the following:
 - 2.1.1 Mishandling, damage before installation, or incorrect installation, in each case caused by others.
 - 2.1.2 Normal wear and tear.

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- 2.1.3 Incorrect operational procedures or maintenance, in each case not attributable to the subcontractor.

Indemnity

- 3 The subcontractor indemnifies the principal and Wiley against all costs, losses and damages suffered or incurred by the principal or Wiley arising out of or in connection with any breach by the subcontractor of clauses 1 or 1 of this deed.

Notice of Defects

- 4 The principal or Wiley may notify the subcontractor in writing if either considers there has been any breach of any provision of this deed.
- 4.1 The notice must allow a reasonable period for the subcontractor to respond.
- 4.2 The notice must state a reasonable time within which the relevant subcontract work must be rectified or replaced.

Time to remedy

- 5 The subcontractor must do everything necessary to remedy all breaches notified to it by the principal or Wiley under clause 4 of this deed within a reasonable time after the subcontractor receives the notice.

Failure to remedy

- 6 If the subcontractor fails to perform and complete the works specified in the notice under clause 4 of this deed within a period stated in the notice, the principal or Wiley may give written notice to the subcontractor that the necessary rectification work or replacement will be performed by others.
- 6.1 If the subcontractor fails to complete the rectification work or replacement by the date specified in the notice given under clause 4, the principal or Wiley may have the work performed by others.
- 6.2 The subcontractor indemnifies the principal any Wiley against all costs, losses and damages suffered or incurred by either in having the subcontract works rectified or replaced by others.

Urgent action by principal or the Contactor

- 7 The principal or Wiley may take any urgent action necessary to protect the subcontract works, other property or people as a result of a breach of the warranties stated in clause 1 or the obligations stated in clause 2.
- 7.1 The subcontractor agrees that the principal or Wiley taking such action does not affect any obligation of the subcontractor under this deed.
- 7.2 The subcontractor indemnifies the principal and Wiley against all costs, losses and damages suffered or incurred by the principal or Wiley in taking that urgent action.

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Operation of Deed

- 8 This deed comes into effect when the subcontract is executed by the subcontractor, and is effective whether or not executed by the principal or Wiley.

Definitions

- 9 In this deed, the following terms have the meaning ascribed:
- 9.1 **Subcontract** means the subcontract between the subcontractor and Wiley for the project stated in the schedule.
- 9.2 **Subcontract works** means the works stated in schedule 2 of the subcontract
- 9.3 **Warranty Period** means the period stated in item 2 of the schedule to this deed.

Schedule to deed of warranty

1. Subcontract: ##state subcontract number and date##
2. Warranty period: #state warranty period#

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Execution and date of subcontractor's deed warranty

Executed as a deed.

Dated by the principal _____

Executed by the principal by its duly authorised
representative who warrants that he or she has
the authority to bind the principal to this deed in
the presence of:)
)
)
)

.....
Signature of principal's authorised representative

.....
Signature of witness

.....
Print name of principal's authorised
representative

.....
Print name of witness

Dated by Wiley & Co Pty Ltd _____

**Executed by Wiley & Co Pty Ltd ABN 40 010 604
869** by its duly authorised representative who
warrants that he or she has the authority to bind
Wiley to this deed in the presence of:)
)
)
)

.....
Signature of Wiley's authorised representative

.....
Signature of witness

.....
Print name of Wiley's authorised representative

.....
Print name of witness

Dated by the subcontractor _____

Executed by the subcontractor by its duly
authorised representative who warrants that he
or she has the authority to bind the
subcontractor to this deed in the presence of:)
)
)
)

.....
Signature of subcontractor's authorised
representative

.....
Signature of witness

.....
Print name of subcontractor's authorised
representative

.....
Print name of witness

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