

COMMERCIAL COST PLUS CONTRACT

AUSTRALIAN
BUILDING
INDUSTRY
CONTRACT



Australian
Institute of
Architects



ABIC CP-2014 C

Commercial Cost Plus Contract

Owner:

Contractor:

Site:

Disclaimer:

The Commercial Cost Plus CP-2014 C contract is not warranted for use on domestic projects and state legislation may limit or prohibit the use of cost plus contracts for domestic projects. If you intend to use this contract for a domestic project, seek legal advice on whether you can and how you could use the CP-2014 C contract for that purpose.

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Contract information – Schedule 1

Item 1	The owner	The contractor
Name:		
ABN (if applicable):		
Registration/licence no:		
Representative:		
Address for notices:		
Email:	E:	E:
Mobile:	M:	M:
Telephone:	T:	T:
Facsimile:	F:	F:

If the **party* is an individual, individual trustee, partnership or unincorporated association

Signed by <i>*party</i> :		
Signed by witness:		
Name of witness:		
Date of signing:		

If the **party* is a corporation, corporate trustee or incorporated association

Common seal of <i>*party</i> : (if applicable)		
Signed by:		
Capacity:	Officer/Director/Secretary	Officer/Director/Secretary
Print name:		
Signed by:		
Capacity:	Officer/Director/Sole Director	Officer/Director/Sole Director
Print name:		
Date of signing:		

The owner

The contractor

Schedule 1 – Contract information

Item 1 Clause A5 If the owner has financed the *works using a lending institution

Name of lender:

Representative:

Address:

Email:

Mobile:

Telephone:

Facsimile:

Item 2 Clause A6 The architect

Name:

Registration number

Representative:

Address for notices:

Email:

Mobile:

Telephone:

Facsimile:

Item 3 Clause B2 Special conditions

Are there any other special conditions?

*If yes, the special conditions in **schedule 2a** apply.*

Yes / No
Strike out alternative not applying

Will the owner remain in occupation?

*If yes, the owner occupier special conditions in
schedule 2b apply.*

Yes / No
Strike out alternative not applying

Signed: Owner:

Contractor:

Contract information – Schedule 1

Item 4 The **contractor's fee*

Item 4a **Percentage fee* (excluding **GST*) referable to **clause N1.4.a** %

OR

Item 4b The sum of:

- The **fixed fee* (excluding **GST*) \$
- Percentage for **changes fee* applied in accordance with **clause I2** %
If nothing stated, 10%
- Percentage for **provisional/prime cost fee* applied in accordance with **clause I3** %
If nothing stated, 10%

Item 5 Labour costs

Clause N1.2 Percentage for wages and entitlements %

Item 6 The **works*

Clause A2 Brief description of the **works*:

Item 7 The **site* of the **works*

Clause A2, A4.1 The address/location of the **site*:
Clause A4.1

Item 8 Security provided by contractor

Item 8a Is the contractor to provide security to the owner? Yes / No
Clause C1 *Strike out alternative not applying*

Item 8b Owner's nominated type of security
Clauses C1, C5 *If type not stated on or before execution of this contract, clause C5 applies* State 'cash retention' or 'unconditional guarantees' above. *If nothing stated, cash retention*

Item 9 Security provided by owner

Clause C13 Is the owner to provide security by an **unconditional guarantee* to the contractor? Yes / No
Strike out alternative not applying

Item 10a Percentage of **contract price estimate* for cash retention

Clause B4, C2, C4.5 %
If nothing stated, 5%

Schedule 1 – Contract information

Item 10b Clause C4	Percentage of <i>*contract price estimate</i> for additional security	<hr/> If nothing stated, 10% <hr/>
Item 11	Percentage of <i>*contract price estimate</i> for each <i>*unconditional guarantee</i>	
Item 11a	Security provided by the contractor: (2 unconditional guarantees)	<hr/> If nothing stated, 2 guarantees of 2.5% <hr/>
Item 11b	Security provided by the owner: (1 unconditional guarantee)	<hr/> If nothing stated, 1 guarantee of 5% <hr/>
Item 12 Clauses C8, C11, N7, N13, Q10, Q18	Period for payment of certificates and for release of security	<hr/> business days If nothing stated, 5 business days <hr/>
Item 13 Clause E1	Public liability insurance Is the owner or the contractor to take out and maintain public liability insurance?	<hr/> If nothing stated, the contractor <hr/>
Item 14 Clause E2	Contract works insurance Is the owner or the contractor to take out and maintain contract works insurance?	<hr/> If nothing stated, the contractor <hr/>
Item 15 Clause E4.1, E4.3	Amount to meet fees of the architect and other consultants	<hr/> If nothing stated, 10% of the original *contract price estimate <hr/>
Item 16 Clause E4.1, E4.3	Amount to meet cost of demolition and removal of debris	<hr/> If nothing stated, 10% of the original *contract price estimate <hr/>
Item 17 Clause E4.2	Amount of insurance for injury, illness, disease or death	<hr/> If nothing stated, \$20,000,000.00 <hr/>
Item 18 Clause E9	Insurance excess Amount of excess for public liability insurance (clause E9):	<hr/> If nothing stated, \$1,000.00 <hr/>
	Amount of excess for contract works insurance (clause E9):	<hr/> If nothing stated, \$1,000.00 <hr/>

Contract information – Schedule 1

Item 19 Date by which the owner must give possession of the **site*

Clause F1

Item 20 Quality assurance system

Clause G2.2

Item 21 Separate work by separate contractors

Clause G9

Separate contractor:

Separate work:

Item 22 Commissioning tests for **practical completion*

Clause M1

Item 23 Estimated date for **practical completion*

Clauses K1.3, L, M1

Schedule 1 – Contract information

Item 24 Defects liability period for the
*works

Clause M11

months

If nothing stated, 12 months

Item 25 Date for submitting progress
claims

Clause N3

If nothing stated, the 1st of the month

Item 26 Additional information to be
included in a progress claim

Clause N3

Item 27 Proportion of *contractors fee to
be paid with progress claims

%

Clause N3.3

*Percentage of *fixed fee*

Item 28 Interest rate on overdue amounts

Clause N15

%

If nothing stated, 10% per annum

Item 29 Governing law

Clauses P4, P5,
P6 and R8

*If nothing stated, the State or Territory
where the *site is located*

Item 30 *Official documents

Item 30a

*Official documents required to begin the
*works but to be obtained by the contractor:

Item 30b

*Official documents required to complete the
*works but to be obtained by the owner:

Schedule 2a – Special conditions

Special conditions

Item 3 of schedule 1

Clause B2

REFERENCE

Owner's initials _____

ABIC CP-2014 C

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For definitions, see pages 65 to 67

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Contractor's initials _____

Cost Plus Contract

Owner occupier special conditions – Schedule 2b

The owner remains in occupation

These special conditions only apply for projects where the owner will remain in occupation during construction.

Replace the words “possession of” with the words “access to” in the following subclauses:

A2.1a

A4.1c

D1.1

D1.4c

E1.1

E2.1

E5.1a

F1.1

F1.2

G2.2

Replace **clause M1.4** with the following:

- .1 From 4.00pm on the day the architect issues the notice of **practical completion*, the contractor ceases to have access to the **works* except by prior arrangement with the owner.

Replace **clause Q3.1** with the following:

- .1 If the owner terminates the engagement of the contractor under **clause Q1** or **Q2** before **practical completion*, the owner may exclude the contractor from the **site*.

Schedule 3 – Order of precedence

6. Any other documents described below:

Site Information – Schedule 4

The **site information* is:

Clause F3

Blank lined area for site information.

Schedule 5a – Forms of guarantee

Contractor's **unconditional guarantee* to the owner

Clause C3

for [insert amount \$AUD]
in favour of [insert name of owner]

[Insert name of owner, and ABN if owner is a company] of [insert address] (**owner**) has entered into a written contract dated [insert contract date] with [insert name of contractor and ABN] of [insert address] (**contractor**) for the construction of the works described in that contract. The contract states that the contractor may elect to give security for the performance of the contract in the form of an unconditional guarantee.

[Insert name of security provider] undertakes that if the owner gives it a written notice stating the basis and extent of its entitlement to draw on the guarantee and the amount to which it is entitled, the security provider will pay the owner the amount which the owner declares is due, up to a maximum of the combined amount of [insert amount \$AUD].

It is not the responsibility of the security provider to investigate the accuracy or the reasonableness of the contents of the notice or the declarant's capacity to give the notice. The security provider will make the payments without further reference to the contractor, despite any notice by the contractor or any other person to the security provider not to pay the whole or any part of the amount.

The security provider's liability under this guarantee is not affected by any variation of the contract or by any waiver by the owner of any default by the contractor.

This undertaking remains in force until the first of the following events occurs:

- the owner notifies the security provider in writing that this undertaking is no longer required,
- the security provider pays the owner (in total) the maximum amount payable under this undertaking, or
- the owner informs the security provider that the contractor has performed all its obligations under the contract.

This undertaking creates no rights in anyone except the owner and the owner's successors.

The security provider is not to release this guarantee until the expiry of the prescribed notice period under the contract stated in **item 12 of schedule 1**, namely [insert number of days] days.

This undertaking is governed by the law of [insert jurisdiction].

EXECUTED on [insert date] as a Deed.

Signed, sealed and delivered on behalf of [insert name of security provider] by its attorney [insert name and address of attorney of security provider] declaring it has no notification of the revocation of the power of attorney granted to it on [insert date] under which this undertaking is executed.

Signature of attorney

Signature of witness

Schedule 5b – Forms of guarantee

Contractor's **unconditional guarantee* to the owner for **off-site plant or material*

Clause C10

for [insert amount \$AUD]
in favour of [insert name of owner]

[Insert name of owner, and ABN if owner is a company] of [insert address] (**owner**) has entered into a written contract dated [insert contract date] with [insert name of contractor and ABN] of [insert address] (**contractor**) for the construction of the works described in that contract. The contract states that the contractor may elect to claim in a progress claim the contractor's valuation of off-site plant or material intended to be incorporated into the works but not yet delivered to the site. The contractor must provide the owner with security for the amount claimed for the off-site plant or material in the form of an unconditional guarantee.

[Insert name of security provider] undertakes that if the owner gives it a written notice stating the basis and extent of its entitlement to draw on the guarantee and the amount to which it is entitled, the security provider will pay the owner the amount which the owner declares is due, up to a maximum of the combined amount of [insert amount \$AUD].

It is not the responsibility of the security provider to investigate the accuracy or the reasonableness of the contents of the notice or the declarant's capacity to give the notice. The security provider will make the payments without further reference to the contractor, despite any notice by the contractor or any other person to the security provider not to pay the whole or any part of the amount.

The security provider's liability under this guarantee is not affected by any variation of the contract or by any waiver by the owner of any default by the contractor.

This undertaking remains in force until the first of the following events occurs:

- the owner notifies the security provider in writing that this undertaking is no longer required,
- the security provider pays the owner (in total) the maximum amount payable under this undertaking, or
- the owner informs the security provider that the contractor has performed all its obligations under the contract.

This undertaking creates no rights in anyone except the owner and the owner's successors.

The security provider is not to release this guarantee until the expiry of the prescribed notice period under the contract stated in **item 12** of **schedule 1**, namely [insert number of days] days.

This undertaking is governed by the law of [insert jurisdiction].

EXECUTED on [insert date] as a Deed.

Signed, sealed and delivered on behalf of [insert name of security provider] by its attorney [insert name and address of attorney of security provider] declaring it has no notification of the revocation of the power of attorney granted to it on [insert date] under which this undertaking is executed.

Signature of attorney

Signature of witness

Schedule 5c – Forms of guarantee

Owner's **unconditional guarantee* to the contractor

Clause C14

for [insert amount \$AUD]
in favour of [insert name of contractor]

[Insert name of owner, and ABN if owner is a company] of [insert address] (**owner**) has entered into a written contract dated [insert contract date] with [insert name of contractor and ABN] of [insert address] (**contractor**) for the construction of the works described in that contract. The contract states that the owner must give security in the form of an unconditional guarantee for the performance of the owner's obligation to pay any undisputed payment certificate issued in accordance with the contract.

[Insert name of security provider] undertakes that if the contractor gives it a written notice stating the basis and extent of its entitlement to draw on the guarantee and the amount to which it is entitled, the security provider will pay the contractor the amount which the owner declares is due, up to a maximum of the combined amount of [insert amount \$AUD].

It is not the responsibility of the security provider to investigate the accuracy or the reasonableness of the contents of the notice or the declarant's capacity to give the notice. The security provider will make the payments without further reference to the contractor, despite any notice by the owner or any other person to the security provider not to pay the whole or any part of the amount.

The security provider's liability under this guarantee is not affected by any variation of the contract or by any waiver by the owner of any default by the contractor.

This undertaking remains in force until the first of the following events occurs:

- the contractor notifies the security provider in writing that this undertaking is no longer required,
- the security provider pays the contractor (in total) the maximum amount payable under this undertaking, or
- the contractor informs the security provider that the owner has performed all its obligations under the contract.

This undertaking creates no rights in anyone except the contractor and the contractor's successors.

The security provider is not to release this guarantee until the expiry of the prescribed notice period under the contract stated in **item 12 of schedule 1**, namely [insert number of days] days.

This undertaking is governed by the law of [insert jurisdiction].

EXECUTED on [insert date] as a Deed.

Signed, sealed and delivered on behalf of [insert name of security provider] by its attorney [insert name and address of attorney of security provider] declaring it has no notification of the revocation of the power of attorney granted to it on [insert date] under which this undertaking is executed.

Signature of attorney

Signature of witness

Provisional sums where particular person engaged

- Schedule 6

Provisional sums

† Where the owner intends the contractor to engage a particular person to carry out the work for which a **provisional sum* has been allowed, the name of that person should be shown under "Particular person" in each case. If the identity of the particular person is not known at the time that this contract is executed, the intention to use a particular person should be indicated by inserting 'Yes' under "Particular person" below.

If the actual cost of the **necessary work* under the **provisional sum* exceeds the sum allowed, **clause I3** sets out the circumstances in which the allowance shown in **item 4b** of **schedule 1** will be applied to the difference.

Sum allowed	Description of the <i>*provisional sum</i> :	Particular person†:
\$		
Sum allowed	Description of the <i>*provisional sum</i> :	Particular person†:
\$		
Sum allowed	Description of the <i>*provisional sum</i> :	Particular person†:
\$		
Sum allowed	Description of the <i>*provisional sum</i> :	Particular person†:
\$		
Sum allowed	Description of the <i>*provisional sum</i> :	Particular person†:
\$		
Sum allowed	Description of the <i>*provisional sum</i> :	Particular person†:
\$		
Sum allowed	Description of the <i>*provisional sum</i> :	Particular person†:
\$		

Schedule 7 - Prime cost sums

Prime cost sums

† Where the owner intends the contractor to engage a particular person to carry out the work for which a **prime cost sum* has been allowed the name of that person should be shown under "Particular person" in each case. If the identity of the particular person is not known at the time that this contract is executed, the intention to use a particular person should be indicated by inserting 'Yes' under "Particular person" below.

If the actual cost of the **necessary work* under the **provisional sum* exceeds the sum allowed, **clause 13** sets out the circumstances in which the allowance shown in **item 4b of Schedule 1** will be applied to the difference.

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Description of the <i>*prime cost sum</i> :	Quantity	Rate	Total Sum Allowed
		\$	\$

Particular person†:

Schedule 8 – Items to be supplied by the owner

Items to be supplied by the owner for incorporation in the **works*

Clause N1.3

Items to be supplied by the owner and installed by the contractor (and only the costs of installation are included in the **contract price estimate*).

Items to be supplied and installed by the owner (and no allowance has been included in the **contract price estimate* for supply and installation).

A Overview

A1 Cooperative contracting

- .1 Under this contract, the contractor and the owner must:
 - .a act reasonably
 - .b cooperate in all matters
 - .c avoid obstructing the other and
 - .d provide all reasonable assistance and cooperation to the other who is a claimant under an insurance policy required by this contract.
- .2 These obligations do not affect either **party's* rights or responsibilities under this contract.

A2 Obligations of the contractor

- .1 The contractor must:
 - .a begin the **works* within 10 **working days* after being given possession of the **site*
 - .b diligently carry out all **necessary work* and complete the **works* to the standard set out in the **contract documents*
 - .c keep the **site* and any area affected by the **works* clean and tidy at all times
 - .d comply with all instructions issued under this contract by the architect
 - .e immediately comply with an **urgent instruction* issued by the architect
 - .f obtain all **official documents* required under this contract to complete the **works*, and any shown in **item 30a of schedule 1**
 - .g comply with all other obligations under this contract
 - .h comply with all **relevant legislation*
 - .i bring the **works* to **practical completion* in accordance with **clause M1**.
- .2 If the contractor's capacity to complete the **works* is altered to the extent that it may be unable to meet its obligations, it must immediately inform the architect and the owner in writing.
- .3 If relevant occupational health and safety legislation requires it, the contractor:
 - .a acknowledges that the owner has under this contract appointed it under the occupational health and safety legislation as the principal contractor for the **works*
 - .b will discharge the responsibilities imposed on it as the principal contractor under the occupational health and safety legislation.

A3 Warranties by the contractor

- .1 The contractor warrants that it:
 - .a has the capacity to enter into this contract
 - .b has the skill, technology, human and financial resources necessary to perform its obligations
 - .c is registered or licensed, as the case may be, to carry out the **works* in accordance with the **relevant legislation* and the registration or licence number is shown in **item 1 of schedule 1**
 - .d has been allocated the Australian Business Number (ABN) shown in **item 1 of schedule 1** for taxation purposes and that it is registered for **GST*
 - .e will notify the owner **promptly* of any change in its ABN, **GST* registration, or the status of its licence or registration to carry out the **works*.

A4 Obligations of the owner

- .1 The owner must:
 - .a subject to **subclause A2.1.f**, obtain and give to the contractor all **official documents* required to begin the **works* and any shown in **item 30b** of **schedule 1**
 - .b obtain from neighbouring owners all easements that are required before the **works* can begin
 - .c give possession of the **site* in accordance with this contract
 - .d appoint an architect to administer this contract and provide appropriate **contract documents* for the **works*, given the nature of the **works*
 - .e indemnify the contractor for any liability incurred by the contractor to a third party in respect of any default or negligence of the architect or any other consultant the owner engages in relation to the **works*
 - .f issue instructions to the contractor only through the architect
 - .g pay the contractor the **contract price* as adjusted in accordance with this contract
 - .h comply with all other obligations under this contract.
- .2 If the owner's financial position alters to the extent that it may be unable to meet its obligations under this contract, it must immediately inform the contractor and the architect in writing.
- .3 If the owner does not own the property on which the **works* are to be carried out, written permission from the property owner for the **works* to be carried out must be provided by the owner to the contractor. The contractor is released from any obligations under the contract if the owner fails to provide this written permission.

A5 Warranties by the owner

- .1 The owner warrants that it has the financial resources necessary to perform its obligations.
- .2 If the owner has financed the **works* using a lending institution, the owner warrants that the institution is shown in **item 1** of **schedule 1**.
- .3 If the owner has shown an Australian Business Number (ABN) in **item 1** of **schedule 1**, it warrants that:
 - .a the ABN is correct
 - .b it will notify the contractor if it is not registered for **GST* and
 - .c it will **promptly* notify the contractor if its ABN or registration status changes.
- .4 If relevant work health and safety legislation requires it, the owner:
 - .a appoints the contractor as the principal contractor for the **works* as defined in the work health and safety legislation
 - .b authorises the contractor to exercise such authority of the owner as is necessary to enable the contractor to discharge the responsibilities imposed on the contractor as the principal contractor under the work health and safety legislation.

A6 Architect to administer contract

- .1 The architect for the purposes of this contract is shown in **item 2** of **schedule 1**.
- .2 The architect is appointed to administer this contract on behalf of the owner and the owner warrants that the architect has authority to administer this contract.
- .3 The architect is the owner's agent for giving instructions to the contractor. However, in acting as assessor, valuer or certifier, the architect acts independently and not as the agent of the owner.
- .4 The owner must ensure that the architect, in acting as assessor, valuer or certifier, complies with this contract and acts fairly and impartially, having regard to the interests of both the

A Overview

- owner and the contractor. The owner must not compromise the architect's independence in acting as assessor, valuer or certifier.
- .5 The architect is not the owner's agent for giving or receiving notices under **clause A8, section P** and **section Q**.
 - .6 If the architect resigns, or becomes incapable of acting as architect, or if the owner terminates the engagement of the architect, the owner must immediately nominate another architect and give written notice of the name and address of the architect to the contractor.
 - .7 If the contractor has no reasonable objection to the nominated architect, that person will be appointed as the architect for the purposes of this contract.
 - .8 The newly appointed architect is bound by the written decisions of any previous architect.

A7 Architect's instruction

- .1 The architect may issue an instruction at any time during this contract provided that the instruction is given in writing.
- .2 The architect may give the contractor an **urgent instruction*, if the architect identifies the instruction as urgent, and:
 - .a can demonstrate that the circumstances are urgent or
 - .b receives a request for an **urgent instruction* from the contractor (which may, because of the urgent circumstances, be given by the contractor orally and confirmed in writing within one **working day*) or
 - .c is ratifying urgent action being taken by the contractor to prevent or minimise damage to the **works*.
- .3 If it is not reasonably possible for the architect to give the **urgent instruction* in writing, because of the urgent circumstances, the architect may give the contractor an oral instruction and confirm the **urgent instruction* in writing within one **working day*.
- .4 For the purposes of this contract, an **urgent instruction* has the same effect as an instruction issued by the architect in accordance with **subclause A7.1**, unless the context, or express words in the relevant clause, distinguish between the two forms of instruction.

A8 Disputing architect's certificate, written decision or failure to act

- .1 If a **party* wishes to dispute a certificate, notice, written decision or written assessment issued by the architect, or to dispute the failure of the architect to issue something, the **party* must give the architect written notice under this clause within 20 **working days* after:
 - .a receiving the certificate, notice, written decision or written assessment or
 - .b becoming aware of the failure of the architect to issue something.
- .2 If the **party* fails to give a notice under **subclause A8.1**, the **party* will not be entitled to dispute the matter at all.
- .3 The architect must assess a notice given under **subclause A8.1** and give a written decision to the **party* and the other **party* within 10 **working days*.
- .4 If a **party* wishes to dispute a written decision given under **subclause A8.3**, or the architect's failure to give that decision, the requirements of **section P** apply.

A9 Failure to give certificate, written decision or notice

- .1 If the architect fails to issue a certificate, notice, written decision or written assessment required under this contract in respect of a claim, this does not mean that the claim has been accepted or is valid.

A10 Compensation is sole remedy

- .1 Where the contractor or the owner is entitled to compensation as determined under this contract, that compensation, when paid in full, is the sole and complete remedy for the contractor or the owner under this contract.

REFERENCE

B Documents

B1 Discrepancies or omissions in documents

- .1 No omission in the **contract documents* at the time of execution of this contract prevents the contractor from commencing the **works* in accordance with this contract and the contractor may, during the course of carrying out the **works* seek an instruction in accordance with **clause B1.2** without prejudice to any of its other rights under this contract.
- .2 If either **party* discovers a discrepancy, ambiguity, or omission in, or between, any of the **contract documents*, that **party* must **promptly* give written notice to the architect. The architect must **promptly* resolve the discrepancy, ambiguity, or omission by giving a written instruction to the contractor and a copy to the owner.
- .3 For the purposes of **clause B1.1**, an omission may include any **contract document* that will be brought into existence or a detail or specification which will be determined by the owner in the ordinary course of this contract.

B2 Order of precedence of documents

- .1 Unless otherwise shown in **schedule 3**, the order of precedence of the **contract documents* is as follows:
 - .a any special conditions shown in **schedule 2a**
 - .b any owner occupation special conditions shown in **schedule 2b**
 - .c the conditions set out in this contract and **schedule 1**
 - .d the specifications for the **works* in the order shown in **schedule 3**
 - .e the drawings for the **works* shown in **schedule 3**
 - .f any other document in the order shown in **schedule 3**.
- .2 Large scale drawings take precedence over small scale drawings.
- .3 An instruction from the architect to resolve a discrepancy or ambiguity that is not in accordance with the order of precedence referred to in **clause B2**, is an instruction for a **change to the works*.

B3 Contractor and owner must supply copies of **official documents*

- .1 The contractor and the owner must **promptly* give to the architect or the architect must **promptly* give to the contractor, a copy of any **official document* either in or coming into its possession in relation to the **works*.
- .2 An **official document* is:
 - .a any report, notice, order, permit, licence, approval or other document required or issued by an **authorised person* in relation to the **works*
 - .b any document listed in **item 30 of schedule 1**
 - .c any statutory approval
 - .d an approval for provision of **infrastructure services* to the **site*, such as gas, electricity, telecommunications, water, stormwater or sewerage
 - .e any other document required under any **relevant legislation*.
- .3 An **authorised person* is a building inspector or certifier or other person authorised under **relevant legislation* having jurisdiction over the **works*.

B4 Contractor must provide **contract price estimate*

- .1 On or before the date this contract is executed, the contractor must provide a **contract price estimate* in writing to the owner and the architect.
- .2 The **contract price estimate* does not form part of the **contract documents* or amount to a representation, innocent or otherwise, that gives rise to a contractual, tortious or statutory entitlement to damages or other compensation.
- .3 A **contract price estimate* is, at the time it is prepared, the contractor's fair and reasonable estimate of the **cost of building work* plus **GST* that is likely to be paid by the owner under the contract to complete the **works*, including a statement of the date on which it was prepared.
- .4 The contractor must provide a new **contract price estimate* in writing to the owner and architect each time a claim under **clause N3** is submitted. On delivery to the architect and owner, the new **contract price estimate* replaces the current **contract price estimate* for the purposes of **clauses C2.1, C4 and E4.3**.

C Security

C1 Security provided to owner

- .1 If the contractor is required by **item 8a of schedule 1** to provide security for performance of its obligations under this contract, the contractor must:
 - .a allow the owner to withhold a cash retention sum or
 - .b provide the owner with the **unconditional guarantees* according to the alternative stated in **item 8b of schedule 1**.

C2 Security to owner by cash retention

- .1 If the security provided by the contractor is cash retention, the owner may withhold up to 10% of each progress payment until the value held equates to the percentage shown in **item 10a of schedule 1** of the **contract price estimate* provided under **clause B4.4**.
- .2 The owner must hold the cash retention, including interest earned on it, less any bank fees or charges on the account, as trustee for the contractor in a separate bank account.
- .3 The owner must provide to the contractor evidence that the cash retention is held in accordance with this clause.

C3 Security to owner by **unconditional guarantees*

- .1 If the security provided by the contractor is **unconditional guarantees*, the contractor must within 10 **working days* after this contract is executed give to the owner two **unconditional guarantees* each equal in value to the percentage shown in **item 11a of schedule 1** of the **contract price estimate*.
- .2 An **unconditional guarantee* is an unconditional undertaking or a performance undertaking from a recognised financial institution approved by the owner. The guarantees must be of an approved type. The type shown in **schedule 5a** is approved.
- .3 If the owner is registered for **GST* and able to claim an **input tax credit*, the value of the **unconditional guarantees* which must be provided to the owner is exclusive of the **GST* component of the **contract price estimate*.

C4 **Unconditional guarantees* where estimate exceeded

- .1 If during the term of the contract the **contract price estimate* given from time to time under **clause B4.4** exceeds:
 - .a the original **contract price estimate* given under **clause B4.1**, by at least 20%, ("**Amount A**"), or
 - .b Amount A plus the amount derived by applying the percentage shown in **item 10b of schedule 1** to Amount A, or
 - .c by any subsequent amount which is at least equal to the amount derived by applying the percentage shown in **item 10b of schedule 1** to Amount A,then **clause C4.2** applies.
- .2 At any time after each of **subclauses C4.1.a** or **b** or **c** applies, the owner may in writing notify the contractor that additional security is required in accordance with this **clause C4** so that the total value of security held is equal to the percentage shown in **item 11a of schedule 1** of the **contract price estimate* given under **clause B4.4**.
- .3 If the owner notifies the contractor under **clause C4.2**, the contractor must, no later than when it submits the next progress claim, notify the owner in writing that it will give the owner the additional security by way of either:
 - .a additional **unconditional guarantees* in accordance with **clause C4.4**, or
 - .b further cash retention in accordance with **clause C4.5**.

- .4 If the contractor notifies **unconditional guarantees* to the owner under **clause C4.3.a**, the following applies:
- .a The contractor must **promptly* advise the owner in writing of the **top-up costs*.
 - .b On or before the day the contractor submits the next progress claim, the contractor must give the owner two additional **unconditional guarantees* each equal in value to the percentage shown in **item 11a** of **schedule 1** of the **contract price estimate* made under **clause B4.4**.
 - .c When assessing the claim in accordance with **clause N5.2** for the progress payment immediately after the additional **unconditional guarantee* is given to the owner, the architect must take into account the **top-up costs* advised by the contractor, payable to the contractor.
 - .d When preparing the next certificate after the owner gives notice under **clause C4.2**, the architect must record in that certificate the contractor's chosen form of security.
- .5 If the contractor:
- .a notifies cash retention to the owner, or
 - .b does not provide the **unconditional guarantees*, or
 - .c does not notify the owner under **clause C4.3** before the next payment claim is submitted,
- then the following provisions apply:
- .d The owner may withhold up to a further 10% of each subsequent progress payment until the total value of the **unconditional guarantees* already held by the owner plus the further cash retention under this **clause C4.5**, equates to the percentage shown in **item 11a** of **schedule 1** applied to the latest **contract price estimate* provided under **clause B4.4**.
 - .e Cash retention held under this **clause C4.5.d** is in addition to a cash retention the owner is withholding or may withhold under either **clause C2** or **clause C5.4**.
 - .f The total amount of all cash retention held by the owner at any time must not be greater than 5% of the most recent **contract price estimate* made under **clause B4.4**.
 - .g **Clauses C2.2** and **C2.3** apply to the cash retention held under this **clause C4.5**.
 - .h If the contractor has advised the owner of the **top-up costs*, the owner is not required to pay or reimburse them to the contractor unless **clause C4.6** applies.
- .6 If the owner has withheld a further cash retention in accordance with **clause C4.5** and the contractor subsequently gives the owner the additional **unconditional guarantees* in accordance with **clause C4.4** then:
- .a the owner must pay or reimburse to the contractor the **top-up costs*, and
 - .b the architect must, in the next progress payment certificate, take into account an adjustment for the reimbursement of the cash retention made under **clause C4.5**.

C Security

C5 Change to type of security to owner

- .1 If the owner has not nominated the type of security in **item 8b** of **schedule 1** on or before executing this contract the contractor may by written notice to the architect change the type of security up until the day the architect issues the notice of **practical completion*.
- .2 If the architect receives the written notice from the contractor, the architect must take the contractor's request into account in preparing the next progress certificate.
- .3 To change from cash retention:
 - .a the contractor must give the owner the **unconditional guarantees* in accordance with **clause C3** when it presents the owner with the certificate and **tax invoice* under **clause N6**.
 - .b subject to **clause N8**, the owner must then close the designated trust account and pay the contractor in accordance with **clause N7**, the amount of cash retention held in accordance with **clause C2**, within the period shown in **item 12** of **schedule 1**
 - .c the owner must also provide the contractor with a copy of the bank statement as at closure of the designated trust account.
- .4 To change from **unconditional guarantees*:
 - .a the contractor must allow the owner cash retention to the value of the **unconditional guarantee* being held by the owner under **clause C3**
 - .b the owner must return the **unconditional guarantees* to the contractor when the amount shown on the certificate is paid under **clause N7**
 - .c the owner must hold the cash retention in accordance with **clause C2**.
- .5 Failure to comply with the procedures under this clause does not affect a **party's* obligations under **clause N6**, **N7** or **N8** in relation to amounts shown on the certificate which are not identified as security under this contract.

C6 Owner's right to draw on security provided to it

- .1 The owner may draw on the security provided by the contractor under **clause C1** only if:
 - .a a certificate issued by the architect in favour of the owner under any of **clause N5**, **N11**, **Q9** or **Q17** is not paid by the contractor within the period shown in **item 12** of **schedule 1** and
 - .b the contractor has not disputed the relevant certificate under **clause A8** and
 - .c the owner has complied with the procedure set out in **clause C7**.

C7 Procedure for owner to draw on security provided to it

- .1 To draw on the security under **clause C6**, the owner must first notify the contractor and the architect in writing of the basis and amount of its entitlement not more than 28 days after the end of the period shown in **item 12** of **schedule 1**. The notification is not required if the architect has issued a certificate in favour of the owner under **clause Q9** or **Q17**.
- .2 If the security is cash retention, the owner may then draw on the cash retention to the extent of its entitlement.
- .3 If the security is by **unconditional guarantees*, the owner must give to the security provider a written demand for payment stating the amount of its entitlement.

C8 Owner's release of security on **practical completion*

- .1 When the architect issues the notice of **practical completion*, the contractor is entitled to the release of 50% of the amount of the security then held.
- .2 If the security is cash retention:
 - .a the architect must give to the contractor a certificate equal to 50% of the amount of the security then held at the same time that the notice of **practical completion* is issued
 - .b the contractor, on receiving the certificate, must prepare a **tax invoice* in accordance with **clause N6** and give both documents to the owner for payment
 - .c the amount stated in the certificate must be paid in accordance with **clause N7**.
- .3 If the security is by **unconditional guarantees*, the owner must return to the contractor the guarantees equal to 50% of the value of the **unconditional guarantees* then held, within the period shown in **item 12** of **schedule 1**.

C9 Owner's release of security on final certificate

- .1 When the architect issues a final certificate under **clause N11**, or a certificate under **clause Q9** or **Q17**, as the case may be, the owner must release to the contractor any remaining security less any amount owing to the owner under the certificate.
- .2 If the security is cash retention, the architect must take into account any remaining security when preparing the final certificate.
- .3 If the security is by **unconditional guarantee* and:
 - .a the certificate is in favour of the contractor, the owner must give to the contractor the remaining **unconditional guarantees* within the period shown in **item 12** of **schedule 1**
 - .b the certificate is in favour of the owner, the certificate is evidence of the basis and amount of the owner's entitlement, and the owner may draw on the security under **clause C7** before returning the remaining **unconditional guarantees* to the contractor within the period shown in **item 12** of **schedule 1**.

C10 Security to owner for **off-site plant or material*

- .1 If the contractor wishes to include the contractor's valuation of any **off-site plant or material* in a progress claim submitted under **section N**, the contractor must provide the owner with an **unconditional guarantee* for the purpose, for the amount claimed for the **off-site plant or material*. The **unconditional guarantee* must be of an approved type. The type shown in **schedule 5b** is approved.
- .2 The contractor must provide the **unconditional guarantee* to the owner at the time the relevant progress claim is submitted to the architect in accordance with **clause N3**.
- .3 **Off-site plant or material* means any plant or material that is intended to be incorporated in the **works* but has not yet been delivered to the **site*.

C11 Release of security for **off-site plant or material*

- .1 The contractor must notify the architect in writing when the contractor considers that the **off-site plant or material* which has been included in a progress certificate is incorporated into the **works* in accordance with the **contract documents*.
- .2 Within 10 **working days* of receiving the notice, the architect must decide whether the **off-site plant or material* has been incorporated and within that period, notify the contractor and owner in writing of its decision.
- .3 If the architect decides that the **off-site plant or material* has been incorporated into the **works* in accordance with the **contract documents*, the notice must inform the owner that

C Security

the security provided under **clause C10** must be released within the period shown in **item 12 of schedule 1**.

- .4 If at any time before the owner receives a notice from the architect under **subclause C11.3**, the contractor repays the owner an amount equal to the amount of the security, or the amount of the security remaining following the owner drawing on the security under **clause C12**, as applicable, the owner must return the **unconditional guarantee* to the contractor within the period shown in **item 12 of schedule 1**.

C12 Owner's right to draw on security for **off-site plant or material*

- .1 The owner may draw on the security provided by the contractor under **clause C10** only if:
- .a the **off-site plant or material* has suffered loss or damage which would prevent its incorporation into the **works* in accordance with the **contract documents* or
 - .b a search of the **PPSR* reasonably suggests there is evidence that the title in the **off-site plant or material* is unable to pass from the contractor to the owner or
 - .c a certificate issued by the architect in favour of the owner under **clause Q9** or **Q17** is not paid by the contractor within the period shown in **item 12 of schedule 1** and the contractor has not disputed the certificate under **clause A8** and
 - .d the owner has complied with **clause C13**.

C13 Procedure for owner to draw on security provided to it for **off-site plant or material*

- .1 To draw on the security provided by the contractor under **clause C10**, the owner must notify the contractor and the architect in writing of the basis and amount of its entitlement. The notification is not required if the architect has issued a certificate under **clause Q9** or **clause Q17**.
- .2 The owner must give to the security provider a written demand for payment stating the amount of its entitlement.

C14 Security provided to contractor

- .1 If required by **item 9 of schedule 1**, the owner must provide security to the contractor by **unconditional guarantee*. The **unconditional guarantee* must be of an approved type. The type shown in **schedule 5c** is approved.
- .2 The amount of security the owner must provide to the contractor is equal to the percentage of the **contract price estimate* shown in **item 11b of schedule 1**. The owner must provide the **unconditional guarantee* within 10 **working days* after this contract is executed.

C15 Contractor's right to draw on security provided to it

- .1 The contractor may draw on the security provided by the owner under **clause C14** only if:
- .a a certificate issued by the architect in favour of the contractor under **clause Q9** or **clause Q17** is not paid by the owner within the period shown in **item 12 of schedule 1**
 - .b the owner has not disputed the certificate under **clause A8** and
 - .c it has complied with the procedure set out in **clause C16**.

C16 Procedure for contractor to draw on security provided to it

- .1 To draw on the security under **clause C15**, the contractor must notify the owner and the architect in writing of the basis and amount of its entitlement. The notification is not required if the architect has issued a certificate in favour of the contractor under **clause Q9** or **clause Q17**.
- .2 The contractor must give to the security provider a written demand for payment stating the amount of its entitlement.

C17 Release of security provided to contractor

- .1 The contractor must release the security and return the **unconditional guarantee* to the owner within the period shown in **item 12** of **schedule 1** when:
 - .a a certificate in favour of the contractor issued by the architect following the issue of the notice of **practical completion* has been paid, or
 - .b a certificate in favour of the owner is issued by the architect following the issue of the notice of **practical completion*, or
 - .c the contractor has received the payment demanded from the security provider in accordance with a certificate in favour of the contractor issued under **clause Q9** or **clause Q17**,whichever is applicable.

D Liability

D1 Risk before **practical completion*

- .1 Subject to **clause D2**, from the time the contractor is given possession of the **site* until 4.00pm on the day the architect issues the notice of **practical completion*, the contractor bears the risks described in the following subclauses.
- .2 The risk of injury to or illness, disease or death of any person occurring as a result of the **works*, on or in the immediate vicinity of the **site*.
- .3 The risk of loss of, or damage to, the property of any person occurring as a result of the **works*, on or in the immediate vicinity of the **site*.
- .4 The risk of loss of, or damage to, any **off-site plant or material* and any of the following items on or in the immediate vicinity of the **site*:
 - .a the **works*
 - .b any **necessary work*
 - .c any structure on the **site* before the time the contractor is given possession of the **site*
 - .d on-site materials or equipment intended to be incorporated in the **works*, including any items shown in **schedule 8** and
 - .e plant, tools and equipment.

D2 Indemnity before **practical completion*

- .1 While the contractor bears the risks described in **clause D1**, the contractor must indemnify the owner in respect of any liability arising from negligence or breach of contract or breach of statutory duty by the contractor or any of the contractor's employees, agents, licensees or subcontractors.
- .2 The obligation of the contractor to indemnify the owner is reduced to the extent to which the owner or any of its employees, agents or separate contractors is responsible for the personal injury, illness, disease, death or loss or damage.
- .3 Except if expressly provided otherwise in this contract, if the contractor is to indemnify, reimburse, pay a contribution or pay damages to the owner under this clause or under any other clause, the amount the contractor must pay the owner is:
 - .a reduced by any **input tax credit* directly obtained or obtainable by the owner and
 - .b increased by **GST* the owner has paid or will pay on that indemnity, reimbursement, contribution or damages.

D3 Risk after **practical completion*

- .1 Subject to **clause D4**, from 4.00pm on the day the architect issues the notice of **practical completion*, the owner bears the risks described in the following subclauses.
- .2 The risk of injury to, or illness, disease or death of any person on or in the immediate vicinity of the **site*.
- .3 The risk of loss of, or damage to, the property of any person on or in the immediate vicinity of the **site*.
- .4 The risk of loss of, or damage to, any of the following items on or in the immediate vicinity of the **site*:
 - .a the **works* and
 - .b materials or equipment intended to be incorporated in the **works*, including any items shown in **schedule 8**.

D4 Indemnity after **practical completion*

- .1 While the owner bears the risks described in **clause D3**, the owner must indemnify the contractor in respect of any liability arising from negligence or breach of contract or breach of statutory duty by the owner or any of the owner's employees, agents, licensees or separate contractors.
- .2 The obligation of the owner to indemnify the contractor is reduced to the extent to which the contractor or any of its employees, agents or subcontractors is responsible for the personal injury, illness, disease, death or loss or damage.
- .3 Except if expressly provided otherwise in this contract, if the owner is to indemnify, reimburse, pay a contribution or pay damages to the contractor under this clause or under any other clause, the amount the owner must pay the contractor is:
 - .a reduced by any **input tax credit* directly obtained or obtainable by the contractor and
 - .b increased by **GST* the contractor has paid or will pay on that indemnity, reimbursement, contribution or damages.

D5 Reinstatement during period when contractor bears risk

- .1 If an event occurs which causes loss or damage during the period when the contractor bears the risk, the contractor must **promptly* reinstate, at its own expense, the lost or damaged items referred to in **subclause D1.4**.
- .2 The owner must indemnify the contractor for the cost of reinstatement under this clause to the extent to which the owner, its employees, agents or separate contractors was responsible for the event which caused the loss or damage.

E Insurance

E1 Public liability insurance

- .1 From the time the contractor is given possession of the **site* until 4.00pm on the day the architect issues the final certificate to the contractor and to the owner, the party nominated in **item 13 of schedule 1** must take out and maintain insurance naming the contractor, its subcontractors and the owner as insureds, against:
 - .a injury to or illness, disease or death of, any person occurring directly as a result of the **necessary work*, on or in the immediate vicinity of the **site* (excluding liability in respect of workers' compensation and employers' liability) and
 - .b loss of, or damage to the property of, any person occurring directly as a result of the **necessary work*, on or in the immediate vicinity of the **site* (except the **works*, or materials or equipment on the **site* that are intended to be incorporated in the **works*, or plant, tools and equipment used on the **site*).
- .2 The insurance policy must contain any term required by law, a provision that the policy covers the interests of the owner and the contractor, and any other person involved in the **necessary work* and must exclude:
 - .a loss or liability caused by breach of professional duty by the owner's consultants or any other person involved in the **necessary work*, and
 - .b the insurer's rights of subrogation against any insured (although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy).

E2 Contract works insurance

- .1 From the time the contractor is given possession of the **site* until 4.00pm on the day the architect issues the final certificate to the contractor and to the owner, the party nominated in **item 14 of schedule 1** must take out and maintain insurance naming the contractor, its subcontractors and the owner as insureds against loss of or damage to the items referred to in **subclause D1.4**.
- .2 The insurance policy must contain any term required by law and each of the following:
 - .a the insurance policy covers the interests of the owner and the contractor,
 - .b a notice of a claim given by any one insured is effective in relation to each of the insuredsand must exclude:
 - .c loss or liability caused by breach of professional duty by the owner's consultants or any other person involved in the **necessary work*, and
 - .d the insurer's rights of subrogation against any insured (although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy).

E3 Entitlement to **input tax credit*

- .1 The **parties* must each notify their insurer of their respective entitlement to an **input tax credit* on the insurance premium within 20 **working days* of the insurance being taken out. Each **party* must indemnify the other for any loss arising out of the **party's* failure to notify the insurer. On request by a **party*, the other **party* must provide evidence that it has complied with this clause.

E4 Insurance cover

- .1 The insurance against loss of or damage to the items referred to in **clause E2** must cover:
 - .a the full reinstatement or replacement cost of the **works*, materials and equipment on the **site* that are intended to be incorporated in the **works*, and plant, tools and equipment used on the **site*
 - .b additional consultants' fees including the architect's fees, relating to the reinstatement or replacement for the amount shown in **item 15 of schedule 1**
 - .c any necessary demolition and removal of debris, for the amount shown in **item 16 of schedule 1** and
 - .d all **GST* associated with reinstatement and replacement of the **works*.
- .2 The insurance against liability for injury, illness, disease or death must be at least for the amount shown in **item 17 of schedule 1**.
- .3 If the contractor makes a new **contract price estimate* under **clause B4.4**, the party nominated in **item 14 of schedule 1** must **promptly* ensure that the insurance is sufficient to cover the items listed in **clause E4.1** taking account of the new **contract price estimate*.

E5 Limited right to arrange insurances

- .1 If one of the **parties* is required to take out and maintain either of the insurances under **clause E1** or **E2**, the other may do so if:
 - .a the nominated party fails to satisfy the other **party* that insurances under **clause E1** or **clause E2**, and complying with the required terms, are in place at the time possession of the **site* is given or
 - .b the nominated party fails to comply **promptly* with a request from the other **party* for either, a statement in writing setting out all the provisions of the insurances, or insurance documentation to the satisfaction of the other **party* or
 - .c the nominated party fails to satisfy the other **party* that the insurance remains in place.
- .2 If the other **party* takes out and maintains insurance under this clause and wishes to recover the cost from the nominated party, it must submit to the architect a claim that includes evidence of the premium cost. The architect must take the claim into account in preparing the next certificate and adjust the **contract price* accordingly.

E6 Contractor and owner not to affect insurance

- .1 The contractor and the owner must not do or fail to do anything, or allow anything to be done or not be done, which might affect any insured's right to recover from the insurer in respect of damage or liability covered by an insurance.

E7 Workers' compensation and employers' liability insurances

- .1 The contractor must maintain workers' compensation or employers' liability insurance in accordance with the statutory scheme that applies under this contract until the final certificate for the **works*, as the case may be, is issued under **clause N11**. If that scheme does not provide for an indemnity against a common law damages claim by a worker, the contractor must also maintain insurance against that risk.
- .2 The contractor must ensure that each of its subcontractors maintains similar insurances.

E Insurance

E8 Insurance claims

- .1 Subject to **subclause E8.2**, the contractor has the primary responsibility to make any claim under an insurance policy required by this contract.
- .2 The owner must make a claim where the owner, its agents, employees or licensees directly cause the event giving rise to the loss.
- .3 The following are the obligations of either the owner or the contractor when making an insurance claim for any loss or damage arising from an insured event:
 - .a the insurance claim must be made **promptly*
 - .b the **party* making the insurance claim must provide all information which is required under the relevant insurance policy
 - .c the **party* making the insurance claim must **promptly* notify the architect in writing on becoming aware of the event giving rise to the insurance claim
 - .d the notice must contain details of the insurance claim
 - .e the **party* making the insurance claim must **promptly* give the architect the additional information the architect reasonably requests.

E9 Payment of excess

- .1 The **party* making a claim under an insurance policy arranged under **clause E1** or **E2** must pay the excess. That **party* may recover the excess from the other **party* in proportion to the extent to which the personal injury, illness, disease or death or loss or damage is the result of negligence, or breach of contract or breach of statutory duty by the other **party*. The excess is the amount shown in **item 18** of **schedule 1**.

E10 Contractor entitled to make progress claim as result of loss or damage

- .1 If an event occurs which causes loss or damage to:
 - .a **necessary work* undertaken between the last progress claim and the time that the event giving rise to the loss or damage occurred, and/or
 - .b materials or equipment delivered to the **site* since the last progress claim that are intended to be incorporated in the **works*,the contractor is entitled to submit an additional progress claim to the architect for the **necessary work* and/or materials or equipment on the **site* that were, or were intended to be, incorporated in the **works*, as the case may be, to which the loss or damage occurred.

F1 Owner to give contractor possession of the **site*

- .1 The owner must give the contractor possession of the **site* from the date shown in **item 19** of **schedule 1**.
- .2 However, the owner is not obliged to give possession of the **site* until the owner:
 - .a has received, or the architect as the agent of the owner has received, a copy of the contract executed by both **parties*
 - .b is satisfied that all of the insurances required under **section E** to be provided by the contractor, are in place, and
 - .c has received, or the architect as agent of the owner has received, any **official document* required to begin the **works* that is required under **item 30a** of **schedule 1** to be obtained by the contractor.

F2 Contractor's obligations in relation to the **site*

- .1 The contractor's obligations in relation to the **site*, include the following:
 - .a giving the owner, the architect, separate contractors, consultants and, if applicable, a representative of the owner's lending institution, access on reasonable terms to the **site* and all other places at which **necessary work* is carried out in relation to the **works* by or on behalf of the contractor, after being given reasonable notice
 - .b keeping the **site* and any area affected by the **works* clean and tidy at all times.

F3 Owner warrants that it has given contractor the **site information*

- .1 The owner warrants that it has given the contractor all the **site information* in its possession or control at least 5 **working days* before the closing of tenders.
- .2 **Site information* includes reports, surveys, test results, plans, specifications, computations or other information such as foundations data, soils tests or geotechnical tests and any other information regarding the **site* and the physical conditions on and underlying the **site* shown in **schedule 4**.

F4 Contractor to examine the **site information*

- .1 Before executing this contract, the contractor must have examined the **site information* and have inspected the **site* and its surroundings and, having done so, is entitled to rely on the **site information* to the extent that it is reasonable to do so, having regard to the nature of the **site* and its surroundings.
- .2 The contractor must indemnify the owner against a claim for any loss, expense or damage incurred by a subcontractor engaged by the contractor or any other person as a result of the contractor failing to examine the **site information* or inspect the **site*.

F5 If contractor discovers a **latent condition* or **valuable item*

- .1 The contractor must notify the architect in writing and seek instructions within 5 **working days* if the contractor discovers:
 - .a a **latent condition* affecting the **site* which the contractor considers may result in incurring loss, expense or damage, or
 - .b a **valuable item* on the **site*.

F The site

- .2 A **latent condition* is a physical condition on, underlying or adjacent to the **site* which a competent contractor would not have anticipated if the contractor had examined the **site information* and inspected the **site* before executing this contract.
- .3 A **valuable item* includes minerals, money, treasure, fossils, archaeological remains, historic objects or relics.
- .4 Any **valuable item* remains the property of the owner and the contractor must take all necessary steps to avoid removal of, loss of, or damage to, any **valuable item*.

F6 Architect to instruct in relation to a **latent condition* or **valuable item*

- .1 The architect must **promptly* give the contractor a written instruction regarding a **latent condition* or **valuable item*.

F7 If contractor discovers **dangerous or contaminated material*

- .1 If the contractor discovers on the **site* any **dangerous or contaminated material*, it must immediately notify any **relevant authority* and the architect.
- .2 The contractor must take all necessary action in accordance with an **official document* in relation to the **dangerous or contaminated material* and give a copy the document to the architect immediately.

F8 Encroachments

- .1 If the contractor discovers that:
 - .a a structure on a neighbouring owner's property encroaches onto the **site* or
 - .b carrying out the **necessary work* will prejudice the right of support of a neighbouring owner's property andthere is no provision for this situation in the **contract documents*, then the contractor must:
 - .c do nothing to adversely change the situation except to ensure that any adjoining structure is stable
 - .d immediately suspend the **necessary work* in the vicinity of the situation and
 - .e **promptly* request an instruction from the architect.
- .2 The contractor must continue any **necessary work* which will not adversely affect a situation in **subclause F8.1**.

G1 Owner's obligations

- .1 The owner must give the contractor the necessary information to allow the contractor to properly set out the **works* including sufficient information to locate a reference set out mark.

G2 Contractor's obligations

- .1 The contractor must:
 - .a set out the **works* and have the setting out certified by a licensed surveyor
 - .b direct the manner of performance of the **necessary work*
 - .c supervise the **necessary work* competently
 - .d maintain satisfactory industrial relations in relation to the **works*
 - .e maintain compliant occupational health and safety on the **site*.
- .2 Where the owner has shown a requirement for a particular quality assurance system in **item 20 of schedule 1**, the contractor must have that quality assurance system in place before taking possession of the **site*, and the contractor must inspect, test, record and rectify **defects* in accordance with that quality assurance system and the **contract documents*.

G3 Contractor to appoint representative

- .1 The person named as the contractor's representative in **item 1 of schedule 1** is the contractor's representative for the purposes of this contract, particularly for receiving instructions from, and giving information to, the architect. The contractor may change its representative by giving written notice to the architect.
- .2 The contractor must ensure that a contractor's representative is appointed at all times.

G4 Subcontracting

- .1 The contractor may subcontract any part of the **works*, but not the **works* as a whole. The contractor is liable for the **necessary work* done by its subcontractors.
- .2 The contractor must take responsibility for any acts and omissions of its suppliers and subcontractors in relation to the **works*.
- .3 The relevant provisions of this contract must be included in contracts the contractor makes with its suppliers or subcontractors. The contractor must fully inform all potential suppliers or subcontractors of the contractor's relevant obligations under this contract.

G5 Architect may instruct opening up or testing of the **works*

- .1 The architect may at any time give to the contractor a written instruction to open up or carry out tests on elements of the **works* other than as required by the **contract documents* that existed at the time that the **necessary work* was undertaken. The contractor must **promptly* comply with the instruction.

G Building the works

G6 Contractor entitled to claim for costs of opening up or testing

- .1 The contractor is entitled to claim the direct cost of opening up, testing and reinstating the **works* that results from an instruction under **clause G5** only if in the assessment of the architect the opening up or testing does not reveal **defective work*.
- .2 The requirements for making the claim and the procedures to be followed are stated in **section N**.

G7 Architect may instruct suspension of the **works*

- .1 At the owner's request, the architect must instruct the contractor in writing to suspend the whole of the **works*. The contractor must **promptly* comply with the instruction. If the suspension continues for 15 **working days* or more, the contractor may remove from the **site* any materials or equipment intended to be incorporated in the **works* and not paid for by the owner, and any plant, tools and equipment belonging to the contractor.
- .2 If the suspension continues for more than 20 **working days* the contractor may terminate its engagement in accordance with **clause Q13** as if it has already given the notice of termination under **clause Q12**.

G8 Architect may instruct recommencement of the **works*

- .1 After an instruction to suspend the **works* has been given and the owner wishes to recommence the **works*, the architect must instruct the contractor in writing to recommence the **works*. The contractor must comply with the instruction. If the contractor has left the **site*, it must **promptly* return to the **site* and proceed with the **works*.
- .2 This clause does not apply if the contractor has terminated its engagement in accordance with **clause G7**.

G9 Owner may use separate contractors for separate work

- .1 The owner is entitled to use separate contractors to carry out the separate work or do other things shown in **item 21** of **schedule 1**.
- .2 The owner must ensure that any separate contractor carries out its work safely, causes as little interference as possible to the contractor's:
 - .a **necessary work*
 - .b plant and materials delivered to the **site* for incorporation into the **works*
 - .c plant and equipmentand liaises with the contractor in relation to the manner, dates and times for carrying out the separate work.

G10 Contractor's obligations in relation to separate contractor

- .1 The contractor must **promptly* provide the architect with appropriate information relating to the **site* to enable any potential separate contractor to make appropriate allowances in pricing its separate contract and to plan its activities.
- .2 The contractor must cooperate with any separate contractor appointed by the owner.

H1 Contractor's duty to report

- .1 The contractor must give to the architect all documentation, including copies of all receipts, invoices, time sheets, claims and other documents, relevant to:
 - .a the items listed in **clause N1.2**
 - .b information relevant to costs of labour and materials expended
 - .c **change to the works*.
- .2 The documentation must be given to the architect not more than 10 **working days* after the contractor receives it.

H2 Architect's duty to report

- .1 The Architect must provide a written report to the owner and the contractor in respect of the progress of the **works* each month within 21 **working days* after receiving the claim from the contractor under **clause N3**.
- .2 The report must include:
 - .a copies of certificates provided to the contractor in accordance with **clause N5**
 - .b details of how the amounts contained in the certificates compare to the estimates made of the **contract price*
 - .c details of the progress of the **works* including any delays notified under **clause L1**
 - .d details of how the progress of the works compares to any estimation of the date for practical completion
 - .e details of any **change to the works* and fees and costs associated with any **change to the works* under **section J**.

I Adjustment of **fixed fee*

I1 Application

- .1 Section I applies only where the **contractor's fee* is fixed and **item 4b** of **schedule 1** is completed.

I2 Contractor entitled to adjusted fee for **change to the works*

- .1 If a **change to the works* results in an increase to the **cost of building work* the contractor is entitled to an adjustment to the **contractor's fee* in accordance with **clause I2.2**.
- .2 The architect must include in the next progress claim an amount (excluding **GST*) calculated as the **cost of building work* to the contractor of the **change to the works* (excluding **GST*) multiplied by the percentage for the **changes fee* shown in **item 4b** of **schedule 1**.
- .3 The contractor is not entitled to payment as a result of a **change to the works* except as provided for in **subclauses I2.1** and **I2.2**.

I3 Contractor entitled to adjusted fee for **provisional* or **prime cost sum*

- .1 If the **cost of the building work* attributable to a particular **provisional sum* or **prime cost sum* increases compared with that **provisional sum* shown in **schedule 6** or **prime cost sum* shown in **schedule 7**, the contractor is entitled to an adjustment to the **contractor's fee* in accordance with **clause I3.2**.
- .2 The architect must include in the next progress claim an amount (excluding **GST*) calculated as the **cost of building work* to the contractor of the **provisional sum* or **prime cost sum* (excluding **GST*) minus the applicable **provisional sum* shown in **schedule 6** or **prime cost sum* shown in **schedule 7** (excluding **GST*) with the result multiplied by the percentage for the **provisional/prime cost fee* shown in **item 4b** of **schedule 1**.
- .3 The contractor is not entitled to payment as a result of a **provisional sum* or **prime cost sum* increase except as provided for in **subclauses I3.1** and **I3.2**.

J1 Architect may instruct **change to the works*

- .1 The architect may give to the contractor a written instruction for a **change to the works* at any time. For this purpose, a written instruction for a **change to the works* includes an **urgent instruction* given in accordance with **clause J7**.
- .2 The contractor may request an instruction from the architect if it considers that a **change to the works* may be required. A request by the contractor under this clause must be in writing.
- .3 A **change to the works* means a change to the nature and extent of the **works* that changes the **cost of building work*.
- .4 If an instruction is given in accordance with this **clause J1**, the contractor must **promptly* carry out the instruction, subject to a review requested under **clause J2.1**.

J2 Contractor may seek review of instruction for **change to the works*

- .1 The contractor may request the architect to review any instruction given in accordance with **clause J1**. A request by the contractor under this clause must be in writing.

J3 Architect to issue written decision

- .1 If the architect receives a request under **clause J2** the architect must review the instruction and if the **change to the works* is not necessary to complete the **works* the architect must issue a written decision.

J4 If **authorised person* issues **official document*

- .1 If an **authorised person* issues an **official document* to the contractor which requires a **change to the works*, the contractor must notify the architect in writing **promptly* after receiving the **official document*. The notification must request an instruction from the architect and provide a copy of the **official document* to the architect.
- .2 If an **official document* is in relation to **dangerous or contaminated material*, **clause F7** applies.

J5 Architect to give instruction

- .1 If the architect receives an **official document* from the contractor under **clause J4** the architect must **promptly* issue a written instruction to the contractor regarding the **official document*.
- .2 The architect's instruction must be either an instruction in accordance with **clause J1** or state that it is an **urgent instruction* given under **clause J7**.

J6 **Change to the works* for **dangerous or contaminated material*

- .1 If the contractor receives an **official document* under **clause F7** which requires a **change to the works*, the contractor must immediately notify the architect and comply with the **official document*.

J7 Architect may issue **urgent instruction* for **change to the works*

- .1 The architect may give to the contractor an **urgent instruction* for a **change to the works* at any time before the date of **practical completion*.
- .2 The instruction must state that it is given under this clause and that it is urgent.

J Instructing changes to the works

J8 Contractor to immediately comply with **urgent instruction* for **change to the works*

- .1 The contractor must immediately comply with an **urgent instruction* for a **change to the works*.

REFERENCE

K1 **Provisional and *prime cost sums included in contract*

- .1 A **provisional sum* shown in **schedule 6** is a sum exclusive of **GST* included in the contract for:
 - .a performance of foreseeable **necessary work*, including the supply of materials, by a particular person identified in **schedule 6** or a person not identified or not specified at the date of the contract, not fully described by the **contract documents* on the date that this contract was executed.
 - .b connection of an **infrastructure service* to the **site*, by a particular person identified in **schedule 6** where the detail of the **infrastructure service* required, and/or the supplier of the **infrastructure service*, was not known or had not been finally decided on the date that this contract was executed.
- .2 A **prime cost sum* shown in **schedule 7** is a sum exclusive of **GST* included in the contract for a foreseeable item of material or equipment, to be provided by a particular person, the precise identity of which was not known or had not been specified at the date of the contract.
- .3 The contractor agrees that the estimated date for **practical completion* in **item 23** of **schedule 1** contains an adequate allowance of time for any work to be performed by a particular person shown in **schedule 6** or **schedule 7** under any **provisional sum* or **prime cost sum* to the extent that the work was reasonably described in the **contract documents* at the time that the contract was executed.

K2 Architect may instruct contractor to use particular person for **provisional* or **prime cost sum*

- .1 Nothing is to be done for which a **provisional sum* or a **prime cost sum* to be supplied or performed by a person other than the contractor has been included in the contract except in accordance with an instruction from the architect under this **clause K2**.
- .2 Subject to **clause K2.3**, the architect may give an instruction to the contractor for a person other than the contractor to perform work or to supply or supply and install an item for which a **provisional sum* or **prime cost sum* has been included in **schedule 6** or **7**.
- .3 The architect may only issue an instruction under this **clause K2** where the person is identified in **schedule 6** or **7** or the intention to use a particular person whose identity was not known at the time the contract was executed is shown in **schedule 6** or **7**.
- .4 That person referred to in **clause K2.3** is to be considered a subcontractor unless:
 - .a the contractor objects to the person on reasonable grounds and **promptly* notifies the architect in writing or
 - .b the architect has been notified in writing by the person that it is unwilling to enter into a subcontract with the contractor on terms acceptable to the contractor.
- .5 If that person does not become a subcontractor for either reason under **subclause K2.4**:
 - .a that person is a separate contractor in accordance with **clause G9** and
 - .b **clause G10** applies.
- .6 The architect may instruct the contractor to obtain and provide to the architect a written detailed quotation for anything for which a **provisional sum* or a **prime cost sum* to be provided by a particular person identified in **schedule 6** or **7** has been included in the contract.
- .7 The quotation must be for:
 - .a the cost of the particular person identified in **schedule 6** or **7** performing the **necessary work*

K Instructing provisional and prime cost sums

- .b connection of an **infrastructure service* by the particular person identified in **schedule 6 or 7**
- .c the particular person identified in **schedule 6 or 7** supplying, or supplying and installing an item of material or equipment.
- .8 The contractor must notify the architect in writing if **GST* is not applicable to the fee or charge included in the quotation.
- .9 If the architect agrees with the quotation, the architect must issue an instruction to proceed and accept the quotation.
- .10 If the architect:
 - .a does not agree with the quotation or
 - .b has not instructed the contractor to provide a quotationthe architect may nonetheless instruct the contractor to proceed.
- .11 Despite anything in this **section K**, the contractor may pay a fee or charge to a **relevant authority* for which a **prime cost sum* has been included in the **cost of building work* without first receiving an instruction from the architect under this section.

L1 Contractor to notify of delay

- .1 When progress of the **works* is delayed the contractor must, within a reasonable time after becoming aware of the start or end of a delay, as the case may be (but not later than the next progress claim), notify the architect in writing:
 - .a that the **works* are being delayed, and state when the delay began, give a description of the cause or causes of the delay and give an estimate of the number of **working days* affected,
 - .b that the delay has ended, and state when the delay ended, and
 - .c the effect of the delay on the estimated date for **practical completion* set out in **item 23** of **schedule 1**.

L2 New estimated date for **practical completion*

- .1 If the delay notified by the contractor to the architect in accordance with **clause L1.1** has an effect on the estimated date for **practical completion*, on the day the architect receives the notice, the date nominated in the notice will be substituted for the date in **item 23** of **schedule 1**.

M Completion of the works

M1 Practical completion

- .1 The **works* are at **practical completion* when, in the reasonable opinion of the architect:
 - .a they are substantially complete and any **defects* remaining in the **works* are of a minor nature and number, the completion or rectification of which is not practicable at that time and will not unreasonably affect occupation and use
 - .b all commissioning tests in relation to the plant and equipment shown in **item 22 of schedule 1** have been carried out successfully and
 - .c any approvals required for occupation have been obtained from the **relevant authorities* and copies of **official documents* evidencing the approvals have been provided to the architect.
- .2 The contractor agrees to bring the **works* to **practical completion* with due diligence and with all reasonable expedition.
- .3 The estimated date for **practical completion* shown in **item 23 of schedule 1** will not be contractually binding between the parties and will not amount to a representation, innocent or otherwise, that gives rise to a contractual, tortious or statutory entitlement to damages or other compensation.
- .4 The owner takes possession of the **works* at 4.00pm on the date the architect issues the notice of **practical completion*.

M2 Inspection by the contractor

- .1 At least 10 **working days* before the date the contractor expects that **practical completion* will be reached, the contractor must inspect the **works* and prepare a detailed schedule of **defects* and give a copy of the schedule to the architect.
- .2 At the same time, the contractor must give the architect a written timetable for the correction of **defects*.

M3 Notification to architect of **practical completion*

- .1 When the contractor considers that the **works* are at **practical completion*, the contractor must notify the architect in writing and give a copy of the detailed schedule of **defects* to the architect indicating that each item has been corrected or completed to the satisfaction of the contractor.
- .2 The architect must commence its inspection of the **works* **promptly* and complete the inspection within an agreed time or, if none is agreed, within 10 **working days*. The architect must issue a notice or instruction under **clause M4, M5 or M6**.
- .3 Within the agreed time for the architect's inspection, or if none is agreed, within 10 **working days*, the contractor must give the architect any **official documents* required for occupation and evidence that all the commissioning tests shown in **item 22 of schedule 1** have been successful.

M4 Architect to decide if the **works* have reached **practical completion*

- .1 If the architect decides that the **works* have reached **practical completion*, the architect must give written notice of **practical completion* to the contractor and to the owner within 5 **working days* after completing the inspection. The notice must state the date when **practical completion* was reached.
- .2 The architect must also notify the owner in writing that security must be released in accordance with **clause C8**.

M5 If the **works* not at, but near, **practical completion*

- .1 If the architect considers that the **works* are not at **practical completion*, but are near to **practical completion*, the architect must give a written notice to the contractor copied to the owner, listing what is to be done for **practical completion* to be reached. The architect must give the notice to the contractor within 5 **working days* after completing the inspection.

M6 If the **works* not at, and not near, **practical completion*

- .1 If the architect considers that the **works* are not at **practical completion*, and are not near **practical completion*, the architect must give written notice to the contractor and to the owner summarising the reasons for its decision that the **works* are not at, and are not near, **practical completion*. The architect must give the contractor the written notice within 5 **working days* after completing the inspection.

M7 Contractor to bring the **works* to **practical completion*

- .1 If the architect gives notice to the contractor under **clause M5** or **M6**, the contractor must **promptly* do whatever is necessary for **practical completion* to be reached. The contractor must notify the architect in writing when it considers the **works* have reached **practical completion*. The procedures under **clauses M3** to **M7** apply until the architect decides that the **works* have reached **practical completion*.

M8 If architect fails to issue notice of **practical completion*

- .1 If the architect fails to issue a notice under **clause M4**, **M5** or **M6** within 5 **working days* of completion of the inspection, the contractor may request in writing that the architect issue a notice.
- .2 If the architect fails to issue a notice within 5 **working days* of the request:
 - .a the date of **practical completion* will be the date identified in the contractor's notice made under **clause M3** and
 - .b any security must be released in accordance with **clauses C8** or **C9**.

M9 Contractor to correct **defects*

- .1 The contractor must correct any **defects* whether before or after the date of **practical completion*, within the agreed time as stated in an instruction or if no time is stated, within 10 **working days* after receiving a written instruction from the architect to do so.
- .2 The contractor is solely to bear all costs of the **necessary work* required to correct all **defects* or **defective work* and is not entitled to an adjustment to the **cost of building work* or the **contractor's fee* to correct the **defects* or **defective work*.

M Completion of the works

M10 If the contractor fails to correct **defects*

- .1 If the contractor fails to correct a **defect* within the time nominated under **clause M9** or fails to show reasonable cause for the failure together with a timetable for correcting the **defect* that is acceptable to the architect, the owner may use another person to correct the **defect* at the cost of the contractor where the contractor has already been paid for the work that remains **defective*.
- .2 If the owner decides to exercise its right under **clause M10.1** to use another person to rectify a **defect*, the owner is entitled to an adjustment for a sum paid by the owner to that person and the architect must take that payment into account when assessing the next certificate under **clause N5**.

M11 Defects liability period

- .1 The defects liability period is shown in **item 24** of **schedule 1** and commences on the date of **practical completion* of the **works*.
- .2 The architect may notify the contractor that, in respect of any part of the **works* that has undergone significant correction within the first defects liability period, a further defects liability period of equal length to the first defects liability period may run for that part. The notification must be given at the time of acceptance of the corrected work.

M12 Contractor's obligations during and after defects liability period

- .1 If there is any remaining **defect*, or the contractor becomes aware by instruction from the architect or from its own observations of any **defect* during the defects liability period, it must **promptly* return to the **site* and correct the **defect*. This obligation continues until the **defect* is corrected, and does not come to an end when the defects liability period is over.
- .2 The architect cannot give the first instruction to correct an outstanding **defect* after the end of the defects liability period, unless it is for the rectification of a latent **defect* and the final certificate has not been issued.

N Payment for the works

N1 *Contract price

- .1 The **contract price* is the **cost of building work* plus the applicable **contractor's fee* to cover overheads and commission in accordance with **clause N1.4** plus **GST*.
- .2 The **cost of building work* is the actual net cost of the **works* excluding **GST* comprising the total of:
 - .a the gross **wages* paid, plus an amount calculated by applying the percentage in **item 5 of schedule 1** of wages and entitlements,
 - .b the gross **wages* paid, plus an amount calculated by applying the percentage in **item 5 of schedule 1** of wages and entitlements in respect of: one supervisor and foremen, costing clerks, bookkeepers or others approved by the architect as being necessary for the proper execution of the **works*,
 - .c where the contractor is an individual, such periodical amounts in the nature of remuneration as may be agreed upon between the architect and the contractor in respect of work actually performed by the contractor on the **works*,
 - .d cost of board and/or lodging, fares and travelling time of employees employed in the **works* which is legally payable by the contractor or agreed to by the architect as reasonable and necessary for the proper execution of the **works*,
 - .e fees of Licensed Surveyor or Quantity Surveyor as may be approved by the architect,
 - .f premiums paid for insurances required to be taken out by the contractor under Section E,
 - .g reasonable cost of advertising incurred for labour for the **works*,
 - .h the cost of all building materials or goods for and used only in the **works*, such materials and goods to become the property of the owner whether or not incorporated in the **works*,
 - .i freight charges or cost of cartage paid or incurred by the contractor for transporting all building materials to the site including the use of contractor's own trucks and utilities at rates approved by the architect,
 - .j the cost of all authorised sub-contracts for **provisional sums* and **prime cost sums*,
 - .k cost of transport to and from the site and cost of erection and dismantling of plant and temporary buildings used in the **works*, but not including the costs of dismantling and temporary removal from the site or its subsequent return after temporary removal unless the consent of the architect for such temporary removal is first obtained,
 - .l cost of replacement of small tools including hand-held electric tools, ropes and brushware and other similar items used on the **works* and costs of repairing small tools,
 - .m current market hire charges for the hire of scaffolding, scaffolding boards, concrete formwork and plant and machinery which is hired expressly for the **works* and particulars of which are notified to the architect prior to the hiring,
 - .n charges at current market rates for the use of items of the contractor's plant,
 - .o costs of running, maintenance and repair of plant and equipment while used on the **works* which are normally part of a contractor's equipment subject to such plant and equipment being in good working condition when taken to the **site* and the contractor providing evidence to the architect of that fact,
 - .p installation and running cost of temporary electric and other power and lighting,
 - .q cost of water, oil, petrol or other fuel used on the **works*,

Payment for the works N

- .r cost of the installation and telecommunications charges for telephones and data connections located on the **works*,
 - .s any fees paid by the contractor to municipal and/or other authorities,
 - .t subject to **clause M9**, cost of correcting any defect or defective work,
 - .u if opening up or testing under **clause G5** does not reveal **defective work*, the direct cost to the contractor of opening up, testing and reinstating the **works*,
 - .v licence fees, royalties and damages for infringement of patents (including the cost of defending such proceedings) relating to materials, but only where the materials used in the **works* are those specified in the **contract documents* or approved by the owner,
 - .w cost of removal of rubbish and debris from the **site* and final clean-up of the **works*,
 - .x cost of emergency action reasonably required to be taken by the contractor in carrying out the **works*, to protect life and personal property and not otherwise recoverable under an insurance policy taken out under Section E,
 - .y cost of all permanent service connections and fees and any temporary services required for the **works*,
 - .z cost of hire of security services where expressly required by the owner,
 - .aa losses, expenses and damages to the extent not recoverable from insurance required to be taken out under Section E, including any settlement or compromise made with the owner's prior approval in writing,
 - .bb losses, damages, expenses (including legal costs) of defending legal proceedings directly related to the **works*, to which the contractor is a party, but only where such legal proceedings find the contractor to have no fault,
 - .cc other expenses incurred by the contractor in carrying out the **works* which are not expressly disallowed under this contract and which can be reasonably attributed to the **works*, or
 - .dd other costs or expenses reasonably incurred by the contractor in carrying out the **works* and approved in advance in writing by the architect.
- .3 The following items are not included in the **cost of building work*:
- .a cost and expenses incurred by the contractor in providing plant and machinery other than as provided in **subclause N1.2n** necessary for the efficient performance of the **works* and being plant and machinery not used exclusively for the **works* and including depreciation, interest, insurance, replacement and any charges or outgoings
 - .b expenses incurred by the contractor for the first cost of small tools (including hand-held electric tools) ropes, brushware and other similar items
 - .c any "off the job" costs including overhead or other expenses incurred by the contractor including directors' fees, salaries of the contractor, partners or corporate officers of the contractor's organisation, interest on monies, patent rights, general advertising, entertaining, head and branch office administration, commissions, travelling expenses, bonuses, superannuation funds, government taxes, rents and rates
 - .d salaries of clerical or other staff incurred "off the job" in checking and submission of accounts and statements, correspondence and other administrative duties unless such staff are specifically approved by the architect
 - .e items to be supplied and installed by the owner, shown in **schedule 8** or specifically identified elsewhere in the **contract documents*.

N Payment for the works

- .4 The **contractor's fee* is either:
- .a the **percentage fee* shown in **item 4a** of **schedule 1** applied to the **cost of building work*, excluding **GST*, or
 - .b the **fixed fee* shown in **item 4b** of **schedule 1**, excluding **GST*, and as adjusted in accordance with **section I**.

N2 Owner's obligation to pay **contract price*

- .1 The owner must pay the **contract price*, adjusted in accordance with this contract, progressively in accordance with this **section N**.

N3 Progress claims – procedure for contractor

- .1 The contractor may submit to the architect one claim for a progress payment in each month, on or after the date in each month shown in **item 25** of **schedule 1**, unless a different date is agreed in writing between the contractor and the owner. The claim is not a **tax invoice*.
- .2 The claim must set out the contractor's valuation of:
- .a if **item 4a** of the **schedule 1** applies, the **contractor's fee* calculated in accordance with **clause N1.4.a**
 - .b the **cost of building work* to date showing a breakdown in accordance with **clause N1.2**
 - .c where **section J** applies, the cost and a brief description of any **change to the works*
 - .d materials and equipment delivered to the **site* for incorporation in the **works*, provided title has passed to the contractor
 - .e subject to **clause C10**, the value of **off-site plant or material*
 - .f the **contract price estimate* made in accordance with **clause B4.4**
- up to and including the day of the claim.
- .3 The claim must include the proportion of the **contractor's fee*, calculated in accordance with:
- .a **clause N1.4.a** and **item 4a**, where a **percentage fee* applies,
 - .b **clause N1.4.b** and **item 4b** and the percentage stated in **item 27** of **schedule 1**, where a **fixed fee* applies,
- for the work undertaken in the period covered by the claim.
- .4 If **item 4b** of **schedule 1** applies the claim must also separately set out, if any, the **contractor's fee* calculated by applying the relevant percentage shown in **item 4b** of **schedule 1** that relates to:
- .a a **change to the works* to which **clauses J1, J4, J5** or **J7** applies, or
 - .b an instruction issued to the contractor under **clause K2** to proceed with anything for which a **provisional sum* or a **prime cost sum* has been included in the contract.
- .5 The claim must identify any amount of **GST* that has been included in the claim. The claim must be supported by any information shown in **item 26** of **schedule 1** and by a declaration made by the contractor that:
- .a all wages and other entitlements including building industry superannuation and long service leave levies due at the date of the declaration have been paid to or on behalf of all employees of the contractor
 - .b all monies due to subcontractors at the date of the declaration have been paid
 - .c all insurances required to be maintained by the contractor are in force.

N4 Off-site plant and material warranty

- .1 The contractor warrants that any **off-site plant or material* claimed for payment:
 - .a is as specified by the **contract documents*
 - .b is stored securely
 - .c is insured appropriately, noting the interest of the owner and
 - .d will become the property of the owner on payment of the amount claimed.

N5 Progress claims – procedure for architect

- .1 The architect must assess a claim for a progress payment and issue to the contractor and to the owner a certificate setting out any payment due to either the owner or the contractor, within 10 **business days* after receiving a claim for a progress payment.
- .2 When assessing a claim for a progress payment the architect must take account of each of the following:
 - .a the **cost of building work* claimed making allowance for the cost of rectifying **defects* if any
 - .b an allowance for cash retention where **clause C2** applies
 - .c any claim by the owner for a set off of monies due under this contract
 - .d the proportion of the **contractors fee* as shown in **item 27 of schedule 1**
 - .e if the progress claim relates to a **change to the works* or if the architect issues an instruction to the contractor to proceed with anything for which a **provisional sum* or a **prime cost sum* has been included in the contract, the percentage of the **contractors fee* as shown in **item 4b of schedule 1**, if applicable.
 - .f a decision by the contractor to provide additional security under **clause C4** by way of **unconditional guarantees*.
 - .g any other matter to be taken into account in accordance with this contract.
 - .h **GST*.
- .3 The certificate must identify the amount of **GST* that has been included and the architect must give written reasons for any difference between the **cost of building work* amount certified and the (**GST* exclusive) amount claimed.
- .4 If the architect reasonably needs additional information to assess the claim, the architect must **promptly* ask the contractor for it. If that information is needed to assess only part of the claim, the architect must assess the rest of the claim. The contractor must **promptly* give the architect any additional information the architect requests.

N6 **Tax invoice*

- .1 On receiving a certificate from the architect, the **party* to be paid must deliver the certificate to the other **party* for payment. If the **party* to be paid is registered for **GST*, it must, at the same time, deliver a **tax invoice* equal in value to the certificate to the other **party*.

N7 Certificates – obligation to pay

- .1 The amount stated as owing in any certificate must be paid within the period shown in **item 12 of schedule 1** after delivery of the certificate and the **tax invoice* (if applicable).
- .2 The architect may issue a certificate for payment at any time up until the final certificate is issued.

N Payment for the works

N8 Before making first progress payment

- .1 Before the owner is obliged to make the first progress payment, the contractor must:
 - .a have in place the security by **unconditional guarantee* in accordance with **clause C3** and
 - .b have in place the insurances in accordance with **section E** unless the owner has taken out the insurance in accordance with **clause E5**.

N9 If architect fails to issue certificate

- .1 If the architect fails to issue a certificate on time the contractor may issue a notice in writing to the owner, copied to the architect, requesting the owner to ensure that the architect issues the certificate within 5 **working days* after the date the notice is delivered.
- .2 If the architect fails to issue the certificate within 5 **working days* after the date the notice is delivered, the contractor is entitled to payment of the full amount of the progress claim within 7 calendar days after the date the notice was delivered.
- .3 If the owner then fails to pay the full amount of the progress claim in accordance with **subclause N9.2**, the contractor may immediately suspend the **necessary work* in accordance with **clause Q12**.

N10 Final claim – procedure for contractor

- .1 The contractor is entitled to submit to the architect a final claim for payment when:
 - .a all defects liability periods have ended
 - .b the contractor has rectified all **defects* it became aware of by instruction from the architect or from the contractor's own observations during the defects liability period and
 - .c the **works* have been completed in accordance with this contract.
- .2 The claim must be supported by any information shown in **item 26 of schedule 1** and a declaration made by the contractor that:
 - .a the contractor has performed its obligations under this contract
 - .b all monies due to subcontractors at the date of the declaration have been paid.
- .3 The contractor's final claim must identify any **GST* included in the claim.
- .4 The contractor must submit a final claim within 20 **working days* after receiving a written request to do so from the architect.
- .5 If the contractor fails to comply with a written request made under **subclause N10.4** the architect may determine the final claim.
- .6 After a final claim has been made under **subclause N10.1** or is treated as having been made under **subclause N10.5**, the contractor is not entitled to make any further claims under this contract.

N11 Final certificate – procedure for architect

- .1 The architect must **promptly* assess the final claim. If the architect reasonably needs additional information to do so, the architect may ask the contractor for it. The contractor must **promptly* give the architect any additional information the architect requests. The architect must, within a reasonable time (not exceeding 10 **business days*) after receiving the final claim (or the additional information if requested) issue to the contractor and to the owner a final certificate setting out the amount due for payment.

- .2 The certificate must:
 - .a identify the amount of **GST* that has been included
 - .b give written reasons for any difference between the (**GST* exclusive) amount certified and the (**GST* exclusive) amount claimed and
 - .c notify the owner of its obligation to release any remaining security under **clause C9**.
- .3 If the contractor fails to give the architect any additional information the architect asks for within a reasonable time, the architect must **promptly* assess the claim on the basis of the information the architect has.
- .4 If the engagement of the contractor is terminated under **clause Q1, Q2, Q13 or Q14** a certificate will be issued in accordance with **clause Q9 or Q17**, as applicable.

N12 Final certificate – **tax invoice*

- .1 On receiving the final certificate from the architect, the **party* to be paid must deliver the final certificate to the other **party* for payment. If the **party* to be paid is registered for **GST*, it must, at the same time, deliver a **tax invoice* equal in value to the final certificate to the other **party*.

N13 Final certificate – obligation to pay

- .1 The amount stated as owing in the final certificate must be paid within the period shown in **item 12 of schedule 1** after delivery of the certificate and the **tax invoice* (if applicable).

N14 Effect of final certificate

- .1 The final certificate must state the architect's assessment of all outstanding entitlements under this contract. The final certificate is evidence of the **parties'* entitlements under this contract and that the contractor has performed its obligations under this contract, subject to any matter already in dispute under **section P**.

N15 Interest on overdue amounts

- .1 Each **party* must pay interest on any money that it owes the other but fails to pay on time. In the case of the owner, this includes any delay caused by the failure of the architect to issue a progress certificate on time.
- .2 The interest rate is shown in **item 28 of schedule 1**.
- .3 The interest is calculated daily, from the date the money should have been paid. The interest must be paid on the last day of each month. If interest due on the last day of a month is not paid, it is immediately capitalised and added to the money outstanding.

O Not used

P1 Each **party* must continue to perform its obligations

- .1 If a dispute or difference arises out of or in relation to this contract, the **parties* must continue to perform their obligations under this contract.

P2 Compulsory conference

- .1 If a dispute or difference between the **parties* arises out of or in relation to this contract:
 - .a either **party* may deliver a written dispute notice to the other which states what the dispute is and requires the representatives of the **parties* to meet within 5 **working days* after the dispute notice is delivered to make a bona fide attempt to resolve the dispute or difference.
 - .b if the dispute or difference is not resolved within 5 **working days* after the dispute notice is delivered, representatives of the owner and the contractor with authority to settle a dispute must meet within 10 **working days* after the dispute notice is delivered and make a bona fide attempt to resolve the dispute or difference.
- .2 The operation of this clause is not affected by one **party* receiving a proposal under **clause P3** from the other within 10 **working days* after the dispute notice is delivered.

P3 Alternative dispute resolution

- .1 If the dispute or difference is not resolved within 10 **working days* after the dispute notice is delivered, representatives of the owner and the contractor with authority to settle a dispute may agree, subject to **subclause P3.2**, to resolve their dispute or difference by one of the alternative dispute resolution methods set out in **clause P4, P5 or P6**
- .2 Alternative dispute resolution by one of the methods in **clause P4, P5 or P6** provided in this contract is only available if:
 - .c a written proposal suggesting one or more method is delivered by at least one **party* within 15 **working days* after a dispute notice is delivered
 - .d the **parties* agree in writing on one alternative dispute resolution method within 20 **working days* after a dispute notice is delivered and
 - .e the **parties* commence the agreed alternative dispute resolution method's procedure within 25 **working days* after a dispute notice is delivered.
- .3 If the **parties* fail to comply with **subclause P3.2**, either **party* may begin any legal proceedings available to it.

P4 Mediation

- .1 After written agreement under **clause P3** to mediate the dispute or difference, and within 25 **working days* after a dispute notice is delivered, representatives of the owner and the contractor with authority to settle a dispute must agree in writing on the identity of the mediator or, if not, the **party* that issued the dispute notice must request in writing, copied to the other **party*, that the chairperson of the Chapter of The Institute of Arbitrators & Mediators Australia in the State or Territory shown in **item 29** of **schedule 1**, nominates the mediator.
- .2 Subject to **subclause P4.3** the mediation must be conducted in accordance with the Rules for Mediation of The Institute of Arbitrators & Mediators Australia unless the **parties* agree alternative rules in writing within 5 **working days* after agreement or nomination of the mediator.

P Dispute resolution

- .3 The mediation must commence within 10 **working days* after agreement or appointment of the mediator under **subclause P4.1**, unless the **parties* agree in writing to a longer period.
- .4 If the mediation has failed to resolve the dispute or difference when the mediator confirms the mediation is concluded, either **party* may begin any legal proceedings available to it.

P5 Expert Determination

- .1 After written agreement under **clause P3** to have an expert determine the dispute or difference, and within 25 **working days* after a dispute notice under **clause P2** is delivered, the **parties* must agree in writing on the identity of the expert, or if not, the **party* that issued the dispute notice must request in writing, copied to the other **party*, that the chairperson of the Chapter of The Institute of Arbitrators & Mediators Australia in the State or Territory shown in **item 29** of **schedule 1**, nominates the expert.
- .2 The expert must not act as an arbitrator and, as a condition of appointment, the expert must agree to issue a written decision within 10 **working days* after the expert's appointment, unless the **parties* agree in writing to a longer period.
- .3 Subject to **subclauses P5.2** and **P5.4**, any expert determination is to be conducted in accordance with the Rules for Expert Determination of Commercial Disputes of The Institute of Arbitrators & Mediators Australia.
- .4 The decision of the expert is not subject to review under this contract. If a **party* disputes the decision of the expert it may begin any legal proceedings available to it.

P6 Arbitration

- .1 After written agreement under **clause P3** to arbitrate the dispute or difference, and within 25 **working days* after a dispute notice under **clause P2** is delivered, the **parties* must agree in writing on the identity of the arbitrator or, if not, the **party* that issued the dispute notice must request in writing, copied to the other **party*, that the chairperson of the Chapter of The Institute of Arbitrators & Mediators Australia in the State or Territory shown in **item 29** of **schedule 1**, nominates the arbitrator.
- .2 Subject to **subclause P6.1**, any arbitration is to be conducted in accordance with the Rules for the Conduct of Commercial Arbitrations of The Institute of Arbitrators & Mediators Australia.
- .3 The decision of the arbitrator is not subject to review under this contract. If a **party* disputes the decision of the arbitrator it may begin any legal proceedings available to it.

P7 Legal rights

- .1 Nothing in this section prevents either **party* from taking action at any time to enforce payment due under a certificate issued in accordance with this contract or to seek urgent court relief to prevent the detrimental action of the other **party*.

Q1 Owner may require contractor to remedy default

- .1 If the contractor fails to meet a substantial obligation under this contract, the owner may give the contractor a written notice requiring the contractor to remedy the default within 10 **working days*. The notice must specify the default, and state that it is given under this clause.
- .2 If the default is not remedied, or the contractor fails to show reasonable cause why it cannot be remedied within 10 **working days*, or such additional days as agreed with the architect, the owner may terminate the engagement of the contractor by giving the contractor a written notice of termination.
- .3 The notice of termination must state that it is given under this clause and a copy must be given to the architect.

Q2 Owner may immediately terminate

- .1 If an **insolvency event* occurs in relation to the contractor, the owner may immediately terminate the engagement of the contractor under this contract by giving the contractor a written notice of termination.
- .2 The notice of termination must state that it is given under this clause and a copy must be given to the architect.

Q3 Owner may take possession of the **site*

- .1 If the owner terminates the engagement of the contractor under **clause Q1** or **Q2** before the architect has issued the notice of **practical completion*:
 - .a **clause D3** applies as if the architect had issued the notice of **practical completion* on the day the owner terminates the engagement of the contractor and **clauses E1** and **clause E2** apply, except that the owner must take out the insurance and
 - .b the owner may take possession of the **site* and exclude the contractor from it.
- .2 The owner may take possession of any documents, plant, tools, unused materials and equipment on the **site* belonging to the contractor, and may use them in completing the **works*. The owner must make available for collection by the contractor, the items of which it has taken possession, as soon as it receives the certificate issued under **clause Q9**. The owner is not liable for fair wear and tear of anything of which the owner has taken possession.
- .3 At any time after termination of the contractor's engagement, the architect may instruct the contractor to remove all or some of its property from the **site*. The contractor must comply within 10 **working days*, failing which the owner may remove the property identified in the architect's instruction, and dispose of it. The owner must give notice in writing to the contractor and the architect of the amount the property is disposed for. The owner must pay the contractor the amount the property is disposed for, less the costs of removal and disposal.

Q4 Assignment of contractor's rights

- .1 Where the engagement of the contractor has been terminated under **clause Q1** or **Q2**, the contractor must assign to the owner all of its rights under any subcontract relating to the supply of labour, services, materials or equipment for the **works* if directed to do so by the architect.

Q Termination of engagement

Q5 Owner may contract with others to complete the **works*

- .1 If the owner terminates the engagement of the contractor under **clause Q1** or **Q2**, the owner may contract with others to complete the **works*.

Q6 Owner not bound to make any further payment to contractor

- .1 Where the engagement of the contractor has been terminated under **clause Q1** or **Q2** the owner will not be bound to make any further payment to the contractor unless an obligation to pay arises under **clause Q9**.

Q7 Owner may pay subcontractors or suppliers

- .1 If the owner terminates the engagement of the contractor under **clause Q1** or **Q2**, the owner may at its sole discretion directly pay any subcontractor or supplier for any **necessary work*, materials or equipment necessary to complete the **works*. Any sum paid by the owner to the subcontractor or supplier is to be taken into account by the architect in preparing its certificate under **clause Q9**, provided the owner has not already paid the contractor for the same **necessary work*, materials or equipment.

Q8 Architect to give assessment of cost of completing the **works*

- .1 Where the engagement of the contractor has been terminated under **clause Q1** or **Q2**, the architect must **promptly* make a written assessment of the cost to the owner of completing the **works* and issue to the contractor and to the owner a copy of that assessment. For this purpose, the cost to the owner of completing the **works* excludes any amount paid by the owner under **clause Q7**. That assessment is to be reflected in the certificate made under **clause Q9**.

Q9 Architect to give certificate of amount payable to contractor or owner

- .1 Where the engagement of the contractor has been terminated under **clause Q1** or **Q2**, and the assessment required under **clause Q8** has been made, the architect must **promptly* prepare a certificate as to the amount payable, including **GST*, by one **party* to the other and issue it to the contractor and to the owner. That certificate is to be calculated using the following procedure.
- .2 The architect is to determine the amount of the **cost of building work* at the date of termination of the engagement of the contractor.
- .3 The architect is to determine the total of:
 - .a the value of building work completed, including **GST*, assessed in the last certificate issued under **clause N5**
 - .b the cost to the owner of completing the **works*, including **GST*, as assessed by the architect under **clause Q8**
 - .c any sum paid directly by the owner to a subcontractor or supplier, including **GST*, under **clause Q7** not already paid to the contractor for the same work, materials or equipment necessary to complete the **works*
 - .d the architect's assessment of any claim by the owner under this contract for a set off of monies due and
- .4 The architect is to determine the total of:
 - .a the amount of security drawn or appropriated to date and
 - .b the amount of any security by cash retention held by the owner in accordance with **clause C2** and **C4.5**.

Termination of engagement Q

- .5 The certified amount payable to the owner or the contractor, as the case may be, is the total determined in **subclause Q9.2**, less the total determined in **subclause Q9.3**, plus the total determined in **subclause Q9.4**.
- .6 The architect must also state on the certificate the value of any remaining security by **unconditional guarantee*.
- .7 If a certificate is issued under this clause, it takes the place of a final certificate under **clause N11**, and **clause C9** applies.

Q10 Contractor or owner to pay under **clause Q9**

- .1 If the balance calculated by the architect under **clause Q9** is a positive figure, the owner must pay the contractor the balance. If the balance is negative, the contractor must pay the owner the balance. On receiving the certificate from the architect, the **party* to be paid must deliver the certificate to the other **party* for payment. If the **party* to be paid is registered for **GST*, it must, at the same time, deliver a **tax invoice* equal in value to the certificate to the other **party*.
- .2 The amount stated as owing must be paid within the period shown in **item 12** of **schedule 1** after delivery of the certificate and the **tax invoice*.

Q11 Contractor may require owner to remedy default

- .1 If the owner defaults by:
 - .a failing to make a progress payment on time or
 - .b failing to meet any other substantial obligation under this contractthen the contractor may give the owner a written notice stating that:
 - .c it is given under this clause
 - .d the owner must rectify the default within 10 **working days* after receipt
 - .e if the default is not so rectified, the contractor will be entitled to proceed under **clause Q12** to suspend the **necessary work* or subsequently under **clause Q13** to terminate its engagement.
- .2 The contractor must give a copy of the notice to the architect.

Q12 Contractor may suspend if default not remedied

- .1 If after receiving a notice under **clause Q11**:
 - .a the owner fails to rectify the default
 - .b the owner fails to show reasonable cause why the default cannot be remedied within time or
 - .c **subclause N9.3** applies,the contractor may immediately suspend the **necessary work* by giving the owner written notice.
- .2 The notice must state that it is given under this clause. A copy of the notice must be given to the architect.
- .3 If, after the suspension of the **necessary work*, the owner rectifies the default, the contractor is entitled to make a claim for any costs incurred in respect of the suspension of work in accordance with section N.

Q13 Contractor's subsequent right to terminate

- .1 After the contractor has given the owner written notice of suspension under **clause Q12**, the contractor may terminate its engagement under this contract by giving the owner written notice of termination.

Q Termination of engagement

- .2 The notice must state that it is given under this clause. A copy of the notice must be given to the architect.

Q14 Contractor may immediately terminate

- .1 If an **insolvency event* occurs in relation to the owner, the contractor may immediately terminate its engagement under this contract by giving the owner written notice.
- .2 The notice must state that it is given under this clause. A copy of the notice must be given to the architect.

Q15 Contractor's entitlement after termination

- .1 If the contractor terminates its engagement under **clause Q13** or **Q14** the owner must pay the contractor the amount the owner would have had to pay if the owner had wrongfully repudiated the contract.

Q16 Procedure for contractor to make claim

- .1 Within a reasonable time of terminating its engagement under **clause Q13** or **Q14** the contractor must submit to the architect a claim setting out the contractor's entitlement, calculated on the same basis as if the owner had wrongfully repudiated the contract.

Q17 Architect to give certificate

- .1 The architect must **promptly* assess any claim made by the contractor under **clause Q16** and must **promptly* issue to the contractor and to the owner a certificate specifying the amount for payment to the contractor or the owner, as the case may be.
- .2 If a certificate is issued under this clause, it takes the place of a final certificate under **clause N11**, and **clause C9** applies.

Q18 Contractor or owner to pay under **clause Q17**

- .1 On receiving the certificate from the architect, the **party* to be paid must deliver the certificate to the other **party* for payment. If the **party* to be paid is registered for **GST*, it must, at the same time, deliver a **tax invoice* equal in value to the certificate to the other **party*.
- .2 The amount stated as owing must be paid within the period shown in **item 12** of **schedule 1** after delivery of the certificate and the **tax invoice*.

Q19 If this contract is frustrated

- .1 If this contract is frustrated at law or the **parties* agree that the contract is frustrated, the contractor is entitled to submit a claim for:
 - .a the value of the **works* at the date of frustration, less any progress payments that have already been made
 - .b the value of any security then held by the owner
 - .c the non-recoverable costs the contractor has incurred, or entered into an agreement to incur, to enable the contractor to complete the **works*
 - .d the non-recoverable costs the contractor has incurred or will incur in order to cease the **necessary work* and
 - .e loss of profit.
- .2 The architect must **promptly* assess the claim and issue to the contractor and to the owner a final certificate specifying the amount for payment. If a final certificate is issued under this clause, it takes the place of a final certificate under **clause N11**, and **clause C9** applies.
- .3 A final certificate issued under this clause must be paid in accordance with **clause Q18**.

R Miscellaneous

R1 Transmission of documents

- .1 A **party* or the architect may only deliver a document under this contract to the other **party* or the architect by:
 - .a delivering it to the **party* or the **party's* representative or the architect by hand or mail at the address shown in **item 1 of schedule 1**
 - .b faxing it to the **party* or the architect at the fax number shown in **item 1 of schedule 1**
 - .c emailing it to the **party* or the architect or attaching an electronic copy to the email. However, email may only be used to deliver a document if the receiving **party* or the architect has given an email address in **item 1 of schedule 1**, or, the **party* or the architect has confirmed in writing that email communication to the **party* or the architect is acceptable for use under this contract.
- .2 If the fax numbers, or email addresses of the **party* and the **party's* representative are different, the document must be sent to both the **party's* address and the address of the **party's* representative.
- .3 If a **party* or the architect has had 5 **working days* written notice from another **party* or the architect of a change of postal address, email address, or fax number, a document may then only be delivered to that **party* or the architect at the latest address, email address or fax number.

R2 Time document is received

- .1 A document that is hand delivered is to be treated as having been received when it is left at the relevant address.
- .2 A document that is sent by mail is to be treated as having been received 3 **working days* (7 **working days* in the case of overseas mail) after posting.
- .3 A document sent by fax is to be treated as having been received as soon as the sender receives an error free transmission report from the correct fax number. If a document is delivered, or an error free transmission report is received after 5.00pm in the time zone of the **site* the document is to be treated as having been delivered at the beginning of the next **working day*.
- .4 A document sent by email is to be treated as having been received when the sender receives a return email, which is an email in reply or from the recipient's email system confirming delivery, or that it has been read. If an email is sent after 5.00pm in the time zone of the **site* the email is to be treated as having been delivered at the beginning of the next **working day*, whether or not the return email is received on the day of sending.

R3 Assignment

- .1 Neither of the **parties* may assign any rights under this contract, without obtaining the other's consent. That consent may not be unreasonably withheld.

R4 Entire contract

- .1 This contract contains everything the owner or the architect has agreed with the contractor in relation to the matters it deals with. Neither **party* may rely on an earlier contract, or on anything else said or done by the other **party* (or by an officer, agent or employee of the other **party*) before this contract was entered into.

R5 Contract to benefit successors and assignees

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

R6 Severability

- .1 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 contract and the rest of this contract is not affected. This does not apply if the clause or part of a clause goes to the heart of the transaction contemplated by this contract.

R7 Waiver

- .1 The fact that a **party* or the architect fails to do, or delays in doing, something it is entitled to do under this contract, does not amount to a waiver of that **party's* or the architect's right to do it. Any waiver by a **party* or the architect must be in writing. A written waiver 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 other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

R8 Governing law

- .1 This contract is governed by the law of the State or Territory shown in **item 29** of **schedule 1** and the **parties* submit to the non-exclusive jurisdiction of its courts.

R9 Compliance with law

- .1 Both **parties* must comply with **relevant legislation* or any order, code, ordinance or **official document* of a **relevant authority* applicable to the **works* and this contract.

R10 Change in relevant legislation

- .1 If, on or after the date of the contract, any **relevant legislation* changes, or new legislation comes into force that requires a change in the **works*, the contractor must **promptly* notify the architect in writing giving details of the effect on the **works*. The architect must **promptly* issue an instruction to the contractor.

R11 Interpretation of headings

- .1 The headings in this contract are used as a guide only and do not form part of it.

R12 Contractor and owner to observe confidentiality

- .1 Confidential information is information marked as confidential when provided by one **party* to the other. Each **party* must not disclose any confidential information except to the extent that either **party* is required, or entitled to do so, by law.
- .2 The contractor must not advertise its relationship with the owner or its involvement in the **works* without the written permission of the owner, which must not be unreasonably withheld.

R Miscellaneous

- .3 The contractor must ensure that its subcontractors are bound by a clause similar to this clause. The owner's written permission to the contractor applies to the subcontractors, unless the owner specifically restricts the permission in writing.

R13 Owner to pay any duty

- .1 The owner must pay any duty payable under **relevant legislation* in relation to execution of this contract.

R14 General interpretation

- .1 A reference to the singular includes the plural and the plural includes the singular.
.2 No rule of construction will apply to the disadvantage of one **party* on the basis that that **party* has put forward the contract documents or any of them.

S1 Definitions

<i>authorised person</i>	a building inspector or certifier or other person authorised under <i>*relevant legislation</i> having jurisdiction over the <i>*works</i>
<i>business day</i>	any day other than a Saturday, Sunday, or statutory public holiday, special holiday or bank holiday in the State or Territory shown in item 29 of schedule 1
<i>change to the works</i>	any change to the <i>*works</i> instructed by the architect under clauses J1, J5 or J7
<i>changes fee</i>	the fee, in addition to the <i>*fixed fee</i> , calculated in accordance with clause I2
<i>contract documents</i>	any special conditions shown in schedule 2 , the conditions of this contract, the specifications, the drawings and any other documents shown in schedule 3
<i>contract price</i>	see clause N1
<i>contract price estimate</i>	see clause B4
<i>contractor's fee</i>	see subclause N1.4 and item 4 of schedule 1
<i>cost of building work</i>	see subclause N1.2
<i>dangerous or contaminated material</i>	material hazardous to persons or to the environment at or above the <i>*investigation or screening level</i> of the <i>National Environment Protection (Assessment of Site Contamination) Measure 1999</i> and which is not anticipated in the <i>*contract documents</i> – see clause F7
<i>defect or defective work</i>	work that is: <ul style="list-style-type: none"> a in breach of any of the warranties set out in the <i>*contract documents</i> b not in accordance with the standard or quality of building work specified in the <i>*contract documents</i>.
<i>fixed fee</i>	if clause N1.4.b applies, the amount stated in item 4b of schedule 1
<i>GST</i>	goods and services tax levied under the <i>*GST Act</i>
<i>GST Act</i>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i>
<i>infrastructure service</i>	a service to the <i>*site</i> for which there is an alternative source of supplier, or supply
<i>input tax credit</i>	has the same meaning as 'input tax credit' under the <i>*GST Act</i>
<i>insolvency event</i>	in relation to a person, means anything that indicates that the person is or will become unable to pay their debts as and when they become due or payable including: <ul style="list-style-type: none"> a the person is declared, made or becomes insolvent b an execution or distress process is levied against the person's assets which include the person's income c the person enters into a deed of company arrangement with the person's creditors

S Definitions

	d	the person fails to comply with a bankruptcy notice or a statutory demand served under the corporations law
	e	a provisional liquidator, liquidator, receiver, receiver and manager, administrator, scheme administrator, controller or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets
	f	a trustee in bankruptcy, interim receiver, controlling trustee or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets.
<i>investigation or screening level</i>		has the same meaning as in the <i>National Environment Protection (Assessment of Site Contamination) Measure 1999</i>
<i>latent condition</i>		see clause F5
<i>necessary work</i>		all work including any temporary work necessary to complete the <i>*works</i>
<i>non-working days</i>		statutory public holidays, special holidays or bank holidays and rostered days off and recognised industry shut-down periods in the State or Territory shown in item 29 of schedule 1
<i>official document</i>		see clause B3
<i>off-site plant or material</i>		see clause C10
<i>party or parties</i>		the owner or the contractor as the case may be
<i>percentage fee</i>		if clause N1.4.a applies, the <i>*contractors fee</i> that is calculated by applying the percentage stated in item 4a of schedule 1 to the <i>*cost of building work</i>
<i>PPSR</i>		the Personal Property Security Register, or equivalent national register for security interests in personal property from time to time
<i>practical completion</i>		see clause M1
<i>prime cost sum</i>		see clause K1.2
<i>promptly</i>		as soon as practicable
<i>provisional sum</i>		see clause K1.1
<i>provisional/prime cost fee</i>		a fee, in addition to the <i>*fixed fee</i> , calculated in accordance with clause I3
<i>relevant authority</i>		a body or organisation, statutory or otherwise, which has authority over the <i>*works</i> in accordance with <i>*relevant legislation</i> , including an <i>*infrastructure service</i> supplier exclusively able to supply the <i>*site</i>
<i>relevant legislation</i>		Acts, regulations, <i>*official documents</i> and official interpretations of them that have a direct relationship to the work being carried out by an authority having jurisdiction of the <i>*works</i>

<i>site</i>	the place at which the <i>*works</i> are to be constructed and any other place made available by the owner to the contractor under this contract (briefly described in item 7 of schedule 1)
<i>site information</i>	see clause F3
<i>tax invoice</i>	an invoice for payment complying with the requirements of the <i>*GST Act</i>
<i>top-up costs</i>	costs, bank fees or charges (excluding <i>*GST</i>) that will be incurred by the contractor to provide two new replacement <i>*unconditional guarantees</i> that are in accordance with clause C4.4
<i>unconditional guarantee</i>	see clause C3
<i>urgent instruction</i>	see clause A7
<i>valuable item</i>	see clause F5
<i>wages</i>	wages and all allowances under the applicable industrial award or other instrument
<i>working day</i>	Monday to Friday excluding <i>*non-working days</i>
<i>works</i>	the completed construction set out in the <i>*contract documents</i> (briefly described in item 6 of schedule 1).